

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.R.P No.1527 of 2016

ORDER:

The Civil Revision Petition is filed against the order dated 13.11.2015 passed in E.A. No.460 of 2015 in E.P. No.93 of 2012 in O.S. No.138 of 1988 on the file of Principal Senior Civil Judge, Kadapa.

2) The petitioners/ Judgment Debtors 1 to 7 filed E.A. No.460 of 2015 in E.P. No.93 of 2012 in O.S. No.138 of 1988 on the file of Principal Senior Civil Judge, Kadapa. The respondents 1 to 4 are the legal representatives of Decree Holder (sole deceased) in O.S. No.138 of 1998 under decree and execution in E.P. No.93 of 2012. They filed an application, before the lower Court, under Order XXI Rule 29 C.P.C for stay of execution of decree in E.P. No.93 of 2012 till disposal of O.S. No.6 of 2013 on the file of VI Additional District Judge, Kadapa. It is mentioned that the Execution Application is pending for delivery of E.P Schedule property and the Decree Holders are proceeding with and Judgment Debtors filed O.S. No.6 of 2013 for the relief of possessory title and injunction and the same is pending in respect of the E.P Schedule Property and thereby pending O.S. No.6 of 2013, the execution of E.P. No.93 of 2012 in O.S. No.138 of 1988 has to be stayed.

3) The Decree Holders as respondents to the stay petition contested saying that the claim in O.S. No.6 of 2013 is also barred by *res judicata* under Section 11 of C.P.C and the decree in O.S. No.138 of 1988 has become final including in S.A. No.449 of 2003 before this Court in relation to the suit property and the parties inter se to bind them and no relief of present execution under the guise of the other suit claim pending can be granted and placed reliance on the Apex Court's expression in ***Shaukat Hussain @ Ali Akram and others vs. Smt.Bhuneshwari Devi (died) by Lrs Others***^[1]. The lower Court therefrom observed that the subject matter of O.S. No.138 of 1988 decreed which is under execution in E.P. No.93 of 2012 and the suit relief in O.S. No.6 of 2013 is one and the same property

and what the Apex Court's expression in Shaukat Hussain (supra) is the applicability of Order XXI Rule 29 C.P.C, there should be two simultaneous proceedings in one Court one is proceeding in execution of the decree of that Court started and the other pending against the same parties *inter se* but these are not such cases for O.S. No.6 of 2013 is pending in another Court i.e., learned VI Additional District Judge, Kadapa whereas the execution of the decree is pending before the learned Principal Senior Civil Judge, Kadapa and thus said provision has no application and dismissed the same.

4) Even otherwise as per Section 41 of the Specific Relief Act, particularly from clause (h), as to when injunction or stay cannot be granted. Thus, once there is an efficacious remedy that can be sought in pending suit O.S. No.6 of 2013, if at all of any interim injunction that can be decided on own merits there and once it is the duty of the Court of the decree lawfully obtained to be executed, and that too when it is not within the parameters laid down in Rule 29 of Order XXI C.P.C with reference to expression of the Apex Court in Shaukat Hussain (supra), the lower Court is right in dismissing the application without going into otherwise merits of any bar of resjudicata to decide such question of maintaining the suit O.S. No.6 of 2013 for possessory title, for self same subject matter covered by O.S. No.138 of 1988 of the litigation made finally between the parties *inter se as per* Section 11 C.P.C.

5) Hence, for this Court while sitting in revision against the impugned order, there is nothing to interfere and thus, there are no grounds to admit the revision application.

6) Accordingly, the Civil Revision Petition is dismissed before admission for no grounds to admit. It is needless to say, any other remedy no way prejudice, by virtue of any of the observations of the lower Court or of this Court in this order. No order as to costs.

7) Miscellaneous petitions pending if any in this revision shall stand closed.

Dr. B. SIVA SANKARA RĀO,J

Date:04.04.2016
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[\[1\]](#) AIR 1973 SC 528