

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

- **Civil Revision Petition nos.5300 & 5332 of 2015** -

COMMON ORDER:

-
CRP.No.5332 of 2015 arises out of the judgment and decree dated 08.06.2015 of the learned Principal Senior Civil Judge at Kothagudem passed in OS.No.178 of 2006 filed for recovery of money.

CRP.No.5330 of 2015 arises out of the order dated 20.08.2015 of the said learned Judge passed in EP.No.160 of 2015 in the aforementioned suit.

2. The defendant in the suit/the respondent in the above said EP being the Judgment Debtor (JDr) is the petitioner in these civil revision petitions.

3. The plaintiff/Decree Holder (DHR) having obtained the aforementioned judgment and decree had filed the EP and sought attachment of the salary of the JDr. Thereupon, by the order impugned in CRP.No.5300 of 2015, the Court below had directed attachment of the salary of the JDr. Aggrieved of the judgment and decree and also the said salary attachment order in the EP passed by the Court below, the present civil revision petitions are filed by the JDr.

4. I have heard the submissions of the learned counsel for the revision petitioner/JDr and the learned counsel for the 1st respondent/DHR. I have perused the material record.

5. The suit that was brought for recovery of money was decreed after full fledged trial. As already noted, the EP is filed and attachment of salary as sought for in the EP was ordered by the Court below.

6. In this factual background, the learned counsel for the JDr would contend that part of Kothagudem town is an agency area and that both the

parties are also residents of an agency area and that in view of the decision of the Supreme Court in **Nagarjuna Grameena Bank and others v. Medi Narayana and others**^[1] the Andhra Pradesh Civil Courts Act, 1972 is applicable to the whole of the State of Andhra Pradesh except the Scheduled Areas of the State and that, therefore, a civil Court is having no inherent jurisdiction to entertain a civil suit in respect of a transaction that had taken place in an agency area between two residents of such area and that, therefore, the decree and judgment granted by a Court lacking inherent jurisdiction are a nullity. He would further contend that the EP filed pursuant to such a decree, which is null and void, is also not maintainable and is liable for rejection/dismissal and that, therefore, the judgment and decree of the Court below must be declared as a nullity and the EP proceedings are to be quashed.

7. On the other hand, the learned counsel for the DHr would submit that in the plaint, it is specifically averred that the cause of the action for the suit arose in Kothagudem town within the jurisdiction of the Court below and that even in the notice which was issued prior to the suit it was stated that the transaction took place in Kothagudem town and that the defendant did not raise a contest regarding lack of jurisdiction of the civil Court and that the suit was decreed on merits after full fledged trial and that, therefore, the question whether the place at which the transaction had taken place, as averred in the plaint, is an agency area or not is a disputed question of fact and, that therefore, it requires a detailed enquiry by the Court below, that is, the executing Court, and hence, the revision petitions are devoid of merit; and that if the JDr is of the view that the Court below lacked inherent jurisdiction, he could have raised the said defence by filing a counter in the EP and that in the facts and circumstances, the revision petitions are liable for dismissal.

8. I have given my earnest consideration to the facts and the submissions. I have gone through the decision of the Supreme Court.

9. It is not in dispute that even though the objection to jurisdiction of a Court, particularly in regard to inherent jurisdiction to entertain a suit, is not

raised in the defence, the Court has the power to determine its own jurisdiction. The law is also well settled that it is open to the JDr to contend that the Court which granted the decree under execution lacked inherent jurisdiction to entertain the suit and grant the decree and that, therefore, the judgment and decree are a nullity and the decree cannot be executed. Be that as it may. In the case on hand, it is categorically averred in the cause of action paragraph of the plaint that the suit transaction took place at Kothagudem. Admittedly, the defendant did not raise the issue of lack of inherent jurisdiction in the defence raised in the written statement. However, that does not preclude the petitioner/JDr from now raising the issue of lack of inherent jurisdiction and contending before the Court of execution that the decree is a nullity. If any such question is raised, it is the duty of the court of execution to first answer the said issue before proceeding further in the matter. Since only a part of Kothagudem town is an agency area even as per the submissions of the learned counsel for the JDr, a detailed enquiry is necessary in regard to the place where the transaction had taken place and whether such place is an agency area. In view of the fact that there is no material now before this Court to come to a safe conclusion that the suit transaction took place in an agency area, though the parties are residents of an agency area as contended by the JDr, this Court cannot record a finding either way. In this factual background and the legal position obtaining, this Court is of the well considered view that the revision petitions can be disposed of with appropriate directions.

10. Accordingly, CRP.No.5300 of 2015 is disposed of giving liberty to the JDr to file in the Execution Petition, a counter by taking the necessary defence in regard to lack of inherent jurisdiction of the Court below to grant the decree, which is under execution and directing the Court of Execution to decide the said issue in the first instance, in strict accordance with the procedure established by law after giving an opportunity of hearing to both the sides and then proceed further in the matter of execution of the decree, if necessary and depending upon the result of the said issue.

Since the question whether or not the judgment and decree in question are valid or a nullity depends upon the decision, which the executing Court may take in the execution petition, no further orders need be passed in CRP.No.5332 of 2015 and the said CRP shall stand disposed as a sequel to the orders in the CRP no. 5300 of 2015.

In the light of these orders, the JDr is directed to file his counter in the execution petition within a month from the date of the receipt of a copy of this order; and, the Court of execution shall dispose of the objections raised in the counter of the JDr, if any filed, as expeditiously as possible and in any event not later than one month thereafter.

The stay orders staying the operation of the order impugned in CRP.No.5300 of 2015 shall be in force for a period of three (03) months from today.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these CRPs shall stand closed.

M. SEETHARAMA MURTI, J

17.02.2016
Vjl

[\[1\]](#) 2012 LawSuit (SC) 898