

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.3609 & 3964 of 2015

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COMMON ORDER:

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These two revisions under Section 115 of the Code of Civil Procedure, 1908 filed by the unsuccessful petitioner/Judgment Debtor arise out of two separate orders passed by the learned II Additional Junior Civil Judge, Chittoor in EA.no.55 of 2015 in EP.no.15 of 2014 and in the said EP.no.15 of 2014 in OS.no.73 of 2006.

2. I have heard the submissions of the learned counsel for the revision petitioner/JDr and the learned counsel for the respondent/DHr. I have perused the material record.

3. The introductory facts, in brief, are as follows:

3.1 The DHr having obtained a decree had filed the execution petition for realization of the decree debt by attachment and sale of the decree schedule immovable property in accordance with the provisions of Order XXI Rules 64 and 67 of the Code.

3.2 The JDr had resisted the execution petition *inter alia* contending in her counter that she is an agricultural coolie; and that she lives by doing agricultural operations as a labourer; and that the EP schedule property is her only property; and that it is assigned *vide* VHS patta no.17/1406 dated 29.12.1996; and that she has no saleable interest over the same; and that under a Government Housing scheme, the Andhra Pradesh State Housing Board had sanctioned a loan for construction of the house; and that as per the direction of the District Collector, the loan was sanctioned/released by the Indian Overseas Bank, Chittoor *vide* loan account no.12352; and that on release of the loan amount in installments basing on the progress of the construction, the construction of the house was completed with the said loan

sanctioned by the bank; and that the original patta was deposited with the Indian Overseas Bank, Chittoor; and that the house of the landless poor person granted to her by way of assignment cannot be attached and be brought to sale in execution proceedings.

3.3 At the time of enquiry into the execution petition, the DHr was examined as PW1 and exhibit P1 valuation certificate was marked on his side. The JDr and her supporting witness were examined as RWs1 and 2 and the counter foil of loan discharge receipt for a sum of Rs.300/- issued by the IOB, Chittoor, the attested copy of the extract of the house site patta register and the attested copy of the extract of basic value register relating to schedule property are exhibited as exhibits R1, X1 and X2.

3.4 On merits, the Court below had allowed the execution petition *inter alia* holding that the JDr is having saleable interest in the EP schedule property and that the DHr is entitled to the relief claimed in the execution petition.

3.5 Aggrieved of the said orders, the JDr had then filed EA.no.55 of 2015 requesting to review the said order *inter alia* contending that the JDr is a landless poor person; and that the orders of the Court below in the EP are contrary to the express provisions of law; and that Section 3 of the A.P. Assigned Lands (Prohibitions of transfers) Act, 1977 ('the Act 9 of 1977', for short) ordains that the land that has been assigned by the Government to a landless poor person for the purpose of cultivation or house site shall not be transferred and shall be deemed to have been never transferred; and that the provision in the said section starts with a non obstante clause; and that it has an over riding effect over any other provision of any other law for the time being in force; and that accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer; and that the provision of the said Section 3(4) also ordains that the same shall apply to any transaction of the nature referred to in sub-section 2 in execution of a decree or order of a civil court or any award or order of any other authority; and that, therefore, it is clear that the land that has been assigned to a landless poor person for the purpose of cultivation or house site cannot be

brought to sale even in execution of a decree or order of civil Court; and that, therefore, the DHr cannot bring the village house site that was assigned to the JDr and the house thereon for sale in execution of the decree; and that the observations in the order impugned are incorrect and unsustainable.

3.6 The Court below had dismissed the review petition and confirmed the orders earlier passed in the EP.

3.7 Therefore, assailing the orders in the EP and in the EA aforementioned, the present two revision petitions are filed by the JDr.

3.8 The JDr had also urged that the observations made in the order passed in the review petition that the land assigned under DKT patta and the house site assigned under VHS patta are different are not legally valid; and that the said finding is not supported by any authority of law or legally valid evidence; and that the Court below ought to have seen that the Tahasildar, Yadamari Mandal has deposed before the Court below that the house site patta was issued *vide* proceeding in VHS no.17/406 as per the entry no.66 in their register; and that the legal aspects and issues involved in the matter are not taken note of by the Court below; and, that therefore, the order in the EP is liable to be reviewed and set aside.

4. The learned counsel for the JDr while reiterating the contentions of the JDr, which are stated supra, in detail, would contend that the Court below ought to have framed a point in the EP as to whether the EP schedule property is liable for sale and ought to have recorded a finding having adverted to the provisions of the Act 9 of 1977; and that the Court below ought to have seen that the JDr is a lady and is an agricultural coolie, and that the Court below ought to have seen that the house that was constructed by her in the assigned site with the bank loan that was granted under a Government housing scheme is exempt from attachment and sale not only under the provisions of the special enactment but also under Section 60 of the Code; and that the Orders passed in the EP and also in the petition filed for review without properly appreciating the facts and the legal position are

both unsustainable; and that therefore, the revisions may be allowed; and that the EP may be dismissed holding that the property, which is assigned, with the house that was constructed thereon with the bank loan granted under a Government housing scheme is not liable for attachment and cannot be brought to sale in the EP filed pursuant to a money decree obtained by the DHr.

5. On the other hand, the learned counsel for the DHr while supporting the orders impugned in both the revisions would contend as follows: "The Court below has rightly taken note of the fact that the DHr has got the property by virtue of VHS patta and not by way of DKT patta and the distinction between the two kinds of pattas. The evidence brought on record and the additional evidence that the present land is situate in a Gram kantham, which belongs to the Government, do not support the contentions of the JDr. The Court below has rightly held that the JDr has a saleable interest and that the EP schedule property can be brought to sale in execution of a decree of a civil Court.

6. I have bestowed my attention to the facts and the submissions.

6.1 To begin with, it is necessary to restate the core facts, which are as follows: "The DHr obtained a decree for money against the JDr and had filed EP for realization of the decree debt by attachment and sale of the EP schedule immovable property as per the provisions of Order XXI. The JDr having filed a counter resisted the EP *inter alia* contending that the land/house site is assigned to her *vide* patta VHS no.17/1406 dated 29.12.1996 and that after assignment of the said site she had obtained a loan from IOB and that the loan amount was released in a phased manner basing on the progress of the construction and that eventually the house was constructed by the loan advanced by the bank and that since the land was assigned and the house was constructed under a Government Housing scheme with the loan granted by IOB, Chittoor, the said assigned property and the house thereon are exempt from attachment and sale even in execution of the decree of a civil court and that under Section 3 of Act 9 of

1977 there is a clear prohibition from attaching and bringing the said properties to sale pursuant to a decree of a civil Court.

7. Therefore, in the factual background and the contentions, the following two points arise for determination: “Whether the prohibition of transfer of assigned land as contained in the relevant provisions of the Act 9 of 1977 is applicable to the EP schedule property on hand? And, if so, Whether the orders of the Court below, which are assailed in these revision petitions are liable to be set aside?”

8. POINTS:

8.1 Since the facts are stated and the contentions are noted, in detail, there is no need to restate the same. One of the contentions of the DHr is that the evidence brought on record would show that the land in Sy.no.409 is a Grama kantham and that there are decisions of the Courts to show that Gram Kantham land cannot be treated as a Government land and that such gram kantham lands are meant for use as house sites and that the lands or sites even in grama kanthams, which are private lands/sites, can be sold and that when ever such private lands/sites in grama kantham are being sold by executing regular registered documents in respect of the same, the Registrars concerned are obligated to register such documents in respect of such private lands/sites located in Grama kantham and that a particular land is described in the revenue records as grama kantam does not indicate that gram kantam land is a Government land and should be treated as such. There is no dispute with the proposition that there can be private ownership of lands and house sites located in Garam Khantham. Gram Khantham consists of both Government and privately owned properties is beyond any pale of controversy.

8.2 In the case on hand, it is undisputed that the house site was assigned to the JDr by the Government under a VHS patta. There is ample evidence on record to accept the contention of the JDr that the subject site was assigned to the JDr by the Government. Even the court below in its orders had noted that the said property is assigned under VHS patta but had further

gone on to note that there is a difference between DKT patta and VHS patta. Therefore, it can safely be concluded that the present EP schedule property is a property assigned to the JDr under VHS patta.

8.3 The next vital contention of the DHr is that the patta of the JDr itself discloses that the land, which was assigned under the VHS patta, can be alienated after a period of ten years and that the patta being a VHS patta and not a DKT patta, the executing Court was right in holding that the DHr is entitled to the relief prayed for and that the JDr is having saleable interest and that the EP schedule property of the JDr can be attached and be brought to sale for realization of the decree debt.

8.4 In the light of the contentions of the learned counsel for the DHr, which are stated supra it is necessary to refer to the relevant sections of the Act 9 of 1977, which read as under:

"3. Prohibition of transfer of assigned lands: (1) Where, before or after the commencement of this Act, any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house-site, then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this Section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil Court or of any award or order of any other authority.

(5) Nothing in this Section shall apply to an assigned land which was purchased by landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.

4. Consequence of breach of provisions of Section 3:- (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Sec. 3, have been contravened in respect of any assigned land, he may, by order—

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being in force:

Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.

(2) Any order passed in revision under Section 4-B, and subject to such order, the decision in appeal under Sec. 4-A and subject to the said orders in revision and appeal any order passed under sub-section (1) shall be final and shall not be questioned in any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by any officer or authority or Government in pursuance of any power conferred by or under this Act.

(3) for the purposes of this Section, where any assigned land is in possession of a person/other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3."

8.5 I have gone through the above sections of law and also the other relevant provisions of the Act 9 of 1977. The provisions deal with assigned property and do not make a distinction between a DKT patta and VHS patta.

8.6 A perusal of the decision of this Court in **Vaka Punnamma v. Yadavalli Jurala Narasimham [2001(1) ALT 362]** would show that in that civil revision case the orders passed by the learned District Munsif Court, Nandigama in EP.no.36 of 1993 whereby and where under an application for attachment of property filed by the DHr in terms of Order 21 Rule 54 and Order 21 Rules 64 and 66 of the Code was disposed of were under challenge. By the said orders, it was held that the JDr has got saleable interest in the subject property therein and that the property is liable for sale for recovery of the decretal amount. The only contention raised before this Court was that by reason of the provisions of the Act 9 of 1977, the order under challenge confirming the order of attachment and holding that the judgment debtor has got saleable interest in the subject property and that the said property is liable for sale for realization of the decretal amount, could not have been passed. This Court having referred to the provision of Section 3 of Act 9 of 1977 had held as follows:

'A bare perusal of the aforementioned provisions clearly shows that the learned trial Judge committed an error in arriving at a finding that since 10 years had elapsed after the lands were assigned in favour of the petitioner herein in terms of the provisions of the said Act, he had acquired a saleable interest. The aforementioned finding arrived at by the learned trial Judge is contrary to law and thus cannot be sustained. It is set aside accordingly and the matter is remitted to the learned trial Judge for executing the decree in accordance with law, if any.'

Further in the decision in **M. Anumakka v. Turpu gopal Reddy [2009(4) ALT 401]** this Court followed the earlier decision. The facts of this cited case show that the JDr therein had contended that by virtue of the provisions of the said Act 9 of 1977 and that in view of the fact that JDrs are landless poor persons, the property is unalienable and therefore it cannot be sold in execution of the decree in favour of the DHr. This Court having considered the provisions of the aforementioned Sections of law and the scheme of the above said Act had held that the object of the enactment is to protect the assignees who are landless poor persons from being exploited by the rich and that all necessary safeguards have been provided under the Act to see that the assigned property shall remain with the original assignee or his legal heirs and it shall be enjoyed by them only. A similar view was expressed in the decision of this Court in **Gontla Krishna Murthy v. Smt. V. Lakshmi Devi (2009 (3) ALT 560)**. In **Kakuturu Ramanamma and others v. Arigundam Saralamma and others (2011 (2) ALT 347)** while dealing with a similar issue it was held as follows:

“Sub-section (4) of Section 3 of the Act makes it very clear that the provisions of Section 3 shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court of any award or order of any authority. It is also clear that when the land has been assigned to the landless poor person for the purpose of cultivation or as house-site, the same cannot be brought to sale even in execution of a decree or order of a civil Court. Thus, the transfer of assigned land for the purpose of cultivation or a house-site has been prohibited under Section 3 of the Act. Thus, the settled legal position is that a decree-holder cannot bring the assigned lands for sale in execution of the decree passed in his favour by a Civil Court. Similar view had been taken in all the judgments referred supra which are relied upon by the learned counsel for the petitioners.”

8.7 In view of the clear language of the provisions of the Act and the overwhelming precedential guidance this court is of the considered view that the objection raised by the JDr is valid and the Court below is not justified in over ruling the objection and in holding that the JDr is having saleable interest in the EP schedule property and that the same is liable for attachment and sale in the execution of a decree of a civil court. In view of the clear mandate of the law and the ratios in the decisions, which squarely apply to the facts of the case, there is no need to refer to any other decisions, which

are not germane for consideration.

8.8 In the result, both the Civil Revision Petitions are allowed and the orders impugned are set aside. It is made clear that the DHr is at liberty to execute the decree for realization of the decree debt by seeking other reliefs, which the law permits, in accordance with the procedure established by law by proceeding against other properties of the JDr, if any, other than the preset EP schedule property. There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

18th April, 2016
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