

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3087 of 2017

ORDER:

1) Assailing the order dated 20.04.2017, passed in I.A.No.553 of 2016 in O.S.No.251 of 2016 on the file of the IV Additional District Judge, Tirupati, wherein a petition filed for ordering attachment of the schedule property before judgment was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The petitioner/plaintiff filed the above suit for recovery of an amount of Rs.16,90,332/- with interest thereon. Pending the suit, I.A.No.553 of 2016 came to be filed seeking attachment of the schedule property ie. House bearing Door No.3-70 & 3-71 consisting of ground floor and first floor admeasuring 138.57 square yards in Sy.No.83/3 of Durgasamudram Village, Tirupati Rural Mandal, Chittoor District. The documents filed in support of the I.A. would show that the defendant borrowed a sum of Rs.10,00,000/- on 03.01.2014 for his family necessities and executed two promissory notes each for Rs.5,00,000/- in favour of the petitioner, promising to repay the same with interest. In spite of repeated demands, the said amount was not repaid by the defendant. Hence, a legal notice was issued on 09.01.2017, calling upon the defendant to pay the due amount under the two promissory notes. In spite of the receipt of notice, there is no

reply from the defendant. It is stated that the defendant, who is the owner of schedule property, is worth about Rs.30.00 lakhs is trying to alienate the same so as to avoid payment to the petitioner.

3) A counter came to be filed disputing the transaction. According to him, the two promissory notes which formed the basis for filing the suit are fake and forged. It is stated that the schedule property was already sold to third parties under agreement of sale dated 16.08.2016 and also received a consideration of Rs.20.00 lakhs to discharge his sundry debts. He has to execute a registered sale deed after receipt of balance of Rs.1.00 lakhs. Later on, the purchasers issued a legal notice dated 09.01.2017 to the defendant for execution of the sale deed.

4) After considering the material on record, the trial Court rejected the request on the ground that the plaintiff failed to produce any document to show that the petition schedule property is in the name of the petitioner. In the absence of any document, it is held that the trial Court cannot conclude that the property in question is the property of the defendant. Challenging the same, the present revision is filed.

5) Learned counsel for the petitioner mainly submits that the property in dispute is still in the name of the defendant and is not transferred in the name of third parties. According to him, there was only an agreement of sale, pursuant to which a part

consideration received, but that by itself will not amount to transferring the title to the third parties.

6) Reiterating the defence taken in the counter, learned counsel for the respondent would submit that the suit pronotes are forged and fabricated and they were never executed by the defendant. According to him, the question of attachment of the property before judgment would arise only when the Court is satisfied that there exists a liability.

7) Before proceeding further, it would be necessary to refer to Order XXXVIII Rule 5 of C.P.C., which reads as under:

“Where defendant may be called upon to furnish security for production of property; -

(1) Where at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

The Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show-cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If any order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.”

8) It is to be noted that the averments in the counter would show that there was an agreement of sale executed by the defendant in favour of Balakrishna Reddy and Kesavulu Reddy and he is said to have received a sum of Rs.20.00 lakhs as part consideration. According to the defendant, he has to execute sale deed by receiving the balance amount of Rs1.00 lakh. The counter also indicates that a legal notice was given to the defendant calling upon him to receive the balance consideration of Rs.1.00 lakh and execute a sale deed in their favour. But, the defendant did not speak about the execution of sale deed in favour of the third parties.

9) The grievance of the petitioner is that, if the property is not attached and ultimately he succeeds in getting a decree, nothing would remain for recovery. According to him, in order to avoid the payment, the defendant is resorting to these practices. He further submits that if really there was an agreement of sale, nothing prevented the defendant from filing the said agreement before this Court or before the trial Court.

10) Infact, the order is silent with regard to execution of the sale deed. At one stage, learned counsel for the petitioner stated that the transaction appears to be a collusive one done with a view to defeat the claim of the plaintiff. The very purpose of obtaining an order of attachment before judgment, under Order 38 Rule 5 C.P.C., is to ensure that the item of property, so attached is available to be proceeded with, in the event of the suit being decreed.

11) Having regard to the circumstances stated above and as the amount due to the plaintiff is more than Rs.10 lakhs; as no sale deed is executed till date and in case the defendant is allowed to alienate the property, the petitioner will be left no means to realize the debt due under the decree that may be passed against him, this Court is of the view that it is a fit case to direct the defendant to furnish third party security for the suit amount. The trial Court is directed to issue conditional attachment in accordance with law.

12) Accordingly, the Civil Revision Petition is disposed of with the above direction. There shall be no order as to costs.

13) Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.08.2017
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