

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.C.C.A No.105 of 2018

JUDGMENT:

This appeal is filed against the order, dated 05.12.2017, passed in E.A.No.307/2017 in E.P.No.57/2017 in O.S.No.2252/2006 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad.

Suit O.S.No.2252 of 2006 was filed by the decree holder against the judgment debtor for recovery of possession of the suit schedule property. The said suit was decreed on 27.11.2009, directing the judgment debtor to vacate and handover the premises to the decree holder within two months. Aggrieved by the said order, CCCA.No.10 of 2010 was filed before this court. This court, vide order, dated 19.02.2016, dismissed the appeal, but granted one year time from 19.02.2016 to the judgment debtor to make alternative arrangements and to vacate the suit schedule property. As the suit schedule property was not vacated within the said period of one year, an execution petition bearing E.P.No.57/2017 was filed, and the copy of the said execution petition is filed as a part of the material papers. It shows that the E.P.No.57/2017 was filed on 28.02.2017 and the same was taken on file on 01.03.2017. Nevertheless, both the dates are after one year period granted by this court for vacating the suit schedule premises. In that E.P. an objection petition was filed under Order 21 Rule 58 r/w. Section 151 of CPC on 27.03.2017. The essential objections raised to the E.P are; (a) that the decree holder has executed a Gift Deed in favour of his son and that he has no subsisting interest in the property; (b) that the E.P was

filed within one year of the time granted by this Court. Therefore, the Judgment Debtor contended that the E.P is premature.

This court has heard Sri S.M.Rafee, learned counsel for the appellant and Sri V.Hari Haran, learned counsel for the respondent.

Learned counsel for the appellant states that the contents of the Gift Deed are not correct and that there is no delivery of possession at all as mentioned in the Gift Deed. He states that unless and until the Donee comes on record, the E.P cannot be proceeded with. The learned counsel further urged that the E.P is premature as it is filed within one year.

In reply to this, the learned counsel for the respondent submits that merely because the Donee does not come on record, the decree holder is not precluded or prevented under law from executing the decree. He relied upon Section 2(3) of CPC and a decision of the Delhi High Court in *Mohini Syal v. Kushal Kumar*¹ and argues that the decree holder cannot be prevented from executing his decree. He also pointed out the various dates and submitted that the E.P was filed much after the date fixed by this Court for vacating the property.

This court, on examining of the facts, notices that the order passed in CCCA.No.10/2010 stated that one year was given to the petitioner from the date of the order to vacate the premises. The contentions that the judgment debtor applied for certified copy of the order on 19.02.2016 and the certified copy was collected on 15.03.2016 are immaterial. The one year period expired on 19.02.2017. The E.P was filed on 28.02.2017 and taken on file on 01.03.2017 and thus it is after the one year period. The next objection raised by the learned counsel for the petitioner is that in view of the Gift Deed, the Donee alone can execute the decree. In view

¹ 18 (1980) DLT 497

of the clear case law cited by the learned counsel for the respondent, this court holds that the decree holder cannot be prevented from executing the decree. This objection is also overruled.

It is also noted that Order 21 Rule 58 of CPC is only applicable when there is an attachment of property. In case on hand, the decree is for eviction and there is no attachment. Therefore, this court is of the opinion that the application itself is misconceived. It is also noted that the main prayer in E.A.No.307 of 2017 has been amended as “it is prayed that the Hon’ble Court maybe pleased to dismiss the execution petition in E.P.No.57 of 2017”. The said prayer is also misconceived in the opinion of this court.

For all these reasons, this court is of the opinion that the appellant has not made out any case for interference.

Accordingly, this appeal is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 07.08.2018
Dsr

D.V.S.S.SOMAYAJULU,J