HONOURABLE SRI JUSTICE RAMESH RANGANATHAN
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

CCCA No. 224 OF 2018

JUDGMENT: (per HON'BLE SRI JUSTICE N. BALAYOGI)

1. The appellant, a third party to the suit proceedings, preferred this appeal aggrieved by the order dated 06.6.2018 dismissing the application in E.A.No. 5 of 2016 in E.P.No. 2 of 2015 in O.S.No.10 of 2014 on the file of learned XI Additional Chief Judge, City Civil Courts, Hyderabad, filed under Order XXI Rule 58 read with Section 151 CPC for raising attachment of the petition schedule property.

2. The contention of the appellant/third party is that he purchased the E.P. schedule property under agreement of sale dated 16.11.2013 for a consideration for Rs.23,00,000/- and that he paid the entire sale consideration to the third respondent/Judgment debtor and since then he is in possession of the said property. It is contended that at the time of agreement, the third respondent/Judgment debtor delivered colour Photostat copies of the original documents pertaining to the petition schedule property and made him to believe that the documents i.e. registered sale deed dated 18.06.2004 as original document and thereafter, when he noticed and questioned the same, the third respondent replied that he already obtained loan from the fourth respondent-bank and meagre amount was in due. On the pressure of the appellant, the third respondent executed General Power of Attorney dated

19.11.2013 in favour of the appellant to deal with the petition schedule property including sale of it. He also authorized the appellant to pay balance loan amount to the fourth respondent-Bank and to obtain original document. Thereafter though the appellant approached the bank many times, the bank officials requested him to pay the loan amount in instalments since the General Power of Attorney did not authorize him to do so.

Further contention of the appellant/third party is that in the second week of March, 2016 he approached the fourth respondent-bank and the bank officials informed him about the outstanding loan amount of Rs.8,50,000/- due and payable by the third respondent/judgment debtor, on which, he had taken Demand Draft bearing No. 038978 dated 18.03.2016 for the said amount, in favour of fourth respondent-bank, drawn on HDFC Bank, Dilsukhnagar Branch, towards loan account No.347606650091049. However the fourth respondent-bank officials did not receive the said demand draft on the ground that they are busy in the year ending accounts and asked him to come later. While so, on 26.03.2016 when the Court Bailiff came to the petition schedule property, he (appellant) came to know abut the EP pending against the petition schedule property; then came to know that E.P. is pending against the petition schedule property filed in the year 2014. Thereafter he obtained copies of judgment and decree and came to know that petition schedule property is put to sale for realization of the decreetal amount.

Further contended that the Encumbrance Certificate also reflects his registered General Power of Attorney and that the petition schedule property was attached in I.A.No. 10 of 2014 in O.S.No.10 of 2014 dated 10.04.2016.

3. Before the trial Court, the appellant/third party himself was examined as P.W.1 and got marked Exs.A.1 to A.4 on his behalf.

4. Now the point that arises for determination is

> "Whether the findings and conclusions arrived at by the trial Court suffer from any legal infirmities warranting interference in this appeal".

The contention of the appellant/third party is that he purchased the petition schedule property under agreement of sale for valuable sale consideration and since the date of purchase, he is in possession and enjoyment of the same. He contended that he also obtained Demand Draft to discharge the bank loan amount due in by the third respondent/judgment debtor and when insisted , third respondent/judgment debtor executed General Power of Attorney in his favour to deal with the petiton schedule property including sale of it.

Per contra, respondents 1 and 2/decree holders would contend that those alleged documents are forged and fabricated to defeat their interest from recovery of EP amount.

5. The appellant/third party did not file original agreement of sale and also his evidence affidavit. He only filed copies of the order under appeal, copies of petition and affidavit in E.A.No.5 of 2006 and copy of counter filed therein and copy of petition in E.P.No.2 of 2015 in O.S.No.10 of 2014.

6. During the course of arguments, the appellant/third party filed copy of sale deed dated 18.06.2004 which is executed in favour of third respondent/judgment debtor (Ex.A.1); copy of agreement of sale through which the appellant is claiming right and title, of which, original was not filed before the trial Court. Besides that, he filed copies of Ex.A.2,A3, A4 and A.5 and copy of letter issued by the HDFC Bank dated 4.6.2006.

7. From a perusal of the documents, it is very clear to the naked eye that non-judicial stamp used for un-marked agreement of sale dated 16.11.2013, of which, original is not filed, and only a copy was filed, and Photostat copy of General Power of Attorney (Ex.A.2) go to suggest that agreement of sale dated 16.11.2013 is executed by the third respondent/judgment debtor on 16.11.2013. The non-judicial stamp papers used for agreement of sale and GPA –Ex.A.2 bear Nos. BG 223210 and BG 223208 & 223209 respectively. The plea of the appellant is that at the time of agreement of sale dated 16.11.2013 the third respondent/judgment debtor handed over the colour Photostat copies of the link document i.e. registered sale deed executed in favour of third respondent/judgment debtor dated 18.06.2004 by making to believe that it was original document. Two

days thereafter, i.e. may be on 18.11.2013, he noticed that they are colour phtostat copies, but not original and when questioned, the third respondent/judgment debtor replied that he obtained loan from the fourth respondent-bank and meagre loan amount was in due to the said bank. When the appellant pressurized, the third respondent executed Ex.A.2-General Power of Attorney dated 19.11.2013, i.e. merely three days after the agreement of sale dated 16.11.2013. The date of execution of irrevocable General Power of Attorney was corrected by writing with hand as ***'19th'*** day of November, 2013.

8. From the above it is very clear that the non judicial stamp paper used for agreement of sale dated 16.11.2013 and Irrevocable GPA (Ex.A.2) are dated 16.11.2013. The non judicial stamp paper used for agreement of sale bears serial No.BG 223210, whereas the non judicial stamp paper used for irrevocable General Power of Attorney bears serial Nos.BG223208 & BG 223209. Even according to the appellant, there is no explanation as to why non-judicial stamp papers used for agreement of sale and Irrevocable GPA (Ex.A.2) are purchased on the same date i.e. on 16.11.2013 and the reason why non-judicial stamp papers serial No.BG 223210 was used for scribing earliest document i.e. agreement of sale dated 16.11.2013 and non-judicial stamp paper serial Nos. BG 223208 and BG 223209 are used for scribing subsequent Irrevocable General Power of Attorney dated 19.11.2013 and the reason why the Irrevocable General Power of Attorney dated 19.11.2013 was on 16.04.2014, i.e nearly after five months after purchase of the non-

judicial stamp papers. In the absence of any such explanation for the above discrepancy as stated hereinabove, the Trial Court is perfectly legal and valid in holding that the agreement of sale dated 16.11.2013 and Irrevocable General Power of Attorney (Ex.A.2) were prepared on one and the same date. More particularly when the appellant/third party claims that he purchased the petition schedule property under agreement of sale dated 16.11.2013, there is no need to execute Ex.A.2, GPA authorizing the appellant to deal with the petition schedule property including sale of it on 16.11.2013 itself. Even assuming for the sake of argument, but not otherwise, when the appellant questioned about the photostat copies of sale deed, the third respondent/judgment debtor executed Ex.A.2-General Power of Attorney in favour of the appellant, but there is no whisper in Ex.A.2 regarding the execution of agreement of sale dated 16.11.2013 by the third respondent/judgment debtor in favour of the appellant, which certainly raised a doubt as to the genuineness of the agreement of sale executed in favour of the appellant on 16.11.2013.

9. Further it is to be seen that the appellant having claimed right and title over the petition schedule property based on agreement of sale dated 16.11.2013, did not take steps to mark the original of the said document and failed to examine the witnesses to the said document. Therefore the very document based on which the appellant claims right and title over the petition schedule property is fallacious.

10. It is contended by the appellant that he had been precluded from paying the instalments. But he himself contended that when he approached the fourth respondent/bank several times to pay the balance loan amount that was due by the third respondent/judgment debtor, the bank officials demanded him to pay in instalments. The reason stated by him is that the GPA does not authorize him to pay the instalments. But under clause 8 in Page 4 of Ex.A.2-GPA, the appellant was authorized to pay the loan amount in Union Bank of India/fourth respondent. Further the contention of the appellant is that when ever he approached the bank to pay the loan amount and to obtain original document, the officials of the fourth respondent-bank did not receive the amount. However, it is to be seen that the appellant did not mention the dates on which he approached the fourth respondent-bank to pay the balance amount. No piece of paper evidencing that the fourth respondent-bank refused to receive the amount is filed. In usual course, no bank would refuse to receive the amount. The same also clearly falsifies the further contention of the petitioner that the fourth respondent-bank asked him to come later to pay the amount as they are in the financial year end. Further it is very clear from Ex.A.2 that the name of purchaser on the non-judicial stamp papers purchased for Ex.A.2 was found erased and over written and the challan number on the back side of the first paper was also tampered from 369291/2014 to 369291/2013. It is also evident from the endorsement on the back side of the second page of the non-judicial

stamp paper that challan number as 369291 dated 18.11.2014 was clearly mentioned. Even the date of the execution of Ex.A.2 mentioned in page-5 was struck down and written with hand as '*19th*' day of November, 2013. Even assuming that Ex.A.2 was said to be executed on 19.11.2013, but it was registered on 16.4.2014 as per the entry in Book I of the Sub Registrar office, Azampura, and also as per entry in encumbrance certificate dated 29.03.2016.

11. The Electricity Bill marked vide Ex.A.4 stands in the name of third respondent/judgment debtor which clearly shows that the service connection is still in the name of the third respondent/judgment debtor even as on 07.04.2016 though the appellant claims that he is in possession of the EP schedule property from the date of agreement of sale dated 16.11.2013.

12. In the material papers filed along with the appeal, the letter dated 04.06.2016 issued by the HDFC bank is annexed and it shows that Mr. Mohammed Imran is having a savings bank account bearing Account Number 03681530009781 and that he has opted for a DD. It is the case of the appellant that in the second week of March, 2016 he approached the fourth respondent-bank and finally the bank officials told him that the outstanding loan amount is Rs.8,50,000/- and he has taken a demand draft vide No. 038978 dated 18.03.2016 in favour of the fourth respondent-bank towards the loan account bearing No.347606650091049, drawn on HDFC Bank, Dilsukhnagar Branch. According to the letter filed by the appellant, it was obtained by Mr. Mohammed Imran, but not himself.

The DD number stated in the affidavit of the appellant is 038978 whereas the DD number mentioned in the letter dated 4.6.2016 filed by the appellant is 036978, which is altogether a different. The DD mentioned in the said letter was obtained in favour of Union Bank of India, loan A/c No.347606650091049, Rikabgunj, High Court branch. There is nothing either pleaded or proved by the appellant as to the relationship between the appellant and said Mohammed Imran who obtained DD. The appellant did not file any piece of paper or document to show whether DD was handed over to the fourth respondent and the amount was credited to the loan account and the loan amount due by the third respondent/judgment debtor was discharged.

13. In view of the facts and circumstances discussed hereinabove, we are of the considered view that the findings of the trial Court that the documents filed by the appellant/third party are designedly created for the purpose of delaying the execution proceedings and the alleged transactions between the appellant and third respondent/judgment debtor under the alleged agreement of sale dated 16.11.2013, and irrevocable GPA-Ex.A.2 are frivolous transactions, is legal, valid and do not suffer from any legal infirmities warranting interference in this appeal.

14. In the result the appeal fails and is accordingly dismissed by confirming the order dated 06.6.2018 passed in E.A.No 5 of 2016 in E.P.No.2 of 2015 in O.S.No.10 of 2014 on the file of learned XI Additional Chief Judge, City Civil Courts, Hyderabad

15. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE RAMESH RANGANATHAN

JUSTICE N. BALAYOGI

Dated 17th AUGUST, 2018.
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