

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4318 of 2018

ORDER:

The petitioner maintained debtor IP.No.7 of 2018 against the sole creditor/revision respondent who is no other than the decree holder in OS.No.155 of 2009 which is a suit for recovery of money. The petitioner in the debtor IP 'A' schedule mentioned about the amount borrowed from respondent of Rs.65,000/- and the IP enclosed 'B', 'C' & 'D' schedules mentioned for B & C immovable and movable properties as nil and D wearing apparel i.e., one pair of wearing cloths worth Rs.1,000/- and one pair of cheppals Rs.500/-.

2. His averments are that he is doing cultivation by taking lands on lease and he borrowed the amount from respondent for agricultural operations and suffered loss in the lease cultivation and could not discharge the debt due to the respondent and by showing his age as 62 years in claiming of unable to do any cultivation or coolie work and unable to liquidate the debt to the respondent from his pressures constrained to file debtor IP. He did not mention in the insolvency application about the debt covered by the debtor IP 'A' schedule of Rs.65,000/- borrowed from the respondent was already decreed in OS.No.155 of 2009 and as to what is decree debt thereunder not mentioned specifically though supposed to for not entitled to either mis-described or

suppressed. In fact the decree was prior to 2012 and the respondent filed EP.No.72 of 2012 that is also not even mentioned in the debtor IP averments or even 'A' schedule description. The IP it appears shows filed only on 22.04.2016 in CF.No.1504 of 2016 and numbered on 14.06.2018. It is no doubt a clear suppression of material facts of the suit OS.No.155 of 2009 and decree and the execution petition in EP.No.72 of 2012 pending all through by then for the relief of arrest of him.

3. Even according to him in the course of hearing the revision he was owning the landed property even by the date of suit OS.No.155 of 2009 of an extent of Ac.2.97 cents covered by in survey No.404 & 407 of Peramana Village, Sangam Mandal, SPSR Nellore District. He sold out of it according to him by filing copy of the registered sale deed No.6853 dated 08.09.2011 for Rs.2,58,000/- in favour of one Akurathi Ramanaiah of Sangam Village and Mandal. What is he sold of Ac.1.50 cents out of Ac.7.04 cents in S.No.407 and Ac.1.47 cents out of Ac.7.85 cents in S.No.404 from the schedule of the so called sale deed his father's name is P.Balarami Reddy and his name Sanjeeva Reddy and even in the boundary description of Ac.1.47 cents item No.1 of the sale deed East and West of P. Shanti Reddy and P.Ramanamma and for Ac.1.50 cents the western boundary described as P.Ramanamma for the sale deed recitals it shows it was executed by his mother P.Ramanamma W/o.

Balarami Reddy and their children P.Santhi Reddy, P.Raja Reddy, P.Janardhan Reddy and Renuka Reddy and referred the source as outcome of oral partition of their ancestral property. The sale deed did not refer about the debtor IP petitioner Sanjeeva Reddy as co-executant. What was mentioned in the sale deed is the IP petitioner-Sanjeeva Reddy is also one of the sons of said Ramannama and Balrami Reddy and the property referred in the sale deed schedule fallen to the share of Sanjeeva Reddy and in his possession and enjoyment and as a consequence Sanjeeva Reddy is sailing. The sale deed also refers 1/6th joint rights in the motor, pipe line & current service lying in the field of S.Nos.404 & 407 full extent. On its face it is fraud on creditor of outright sale without liquidation of admitted debt in subsistence since long prior and even covered by pending suit OS.No.155 of 2009 leave about not even covered by any document of partition and not even filed any source of title and description as to what extent fell to which of himself and his brothers and not even mentioned the date and proof of any oral partition.

4. In the factual scenario from the EP.No.72 of 2012 pending enquiry in proof of the means where there was arrest warrant issued on showing his possessing of means and to avoid it he filed a protection order application in IA.No.82 of 2018 covered by the impugned dismissal order dated 13.07.2018 by the learned Senior Civil Judge, Kovvur, his

affidavit to the protection application under Section 23 of the Insolvency Act is with averments of suit OS.No.155 of 2009 decree obtained by respondent and EP.No.72 of 2012 filed and arrest warrant obtained on proof of means against him which is pending from which he filed debtor IP and in seeking the protection order. A perusal of the impugned order shows the adangal copy standing in the name of the petitioner as pattader for an extent of Ac.1.50 cents in S.No.407. Even taken what was sold under so called sale dated 13.10.2011 that too during the pendency of suit in fraud of the creditor by the debtor of Ac.1.50 cents out of Ac.7.04 cents in S.No.407 sold, the question of continuation in his name in the adangal does not arise after sale deed 13.10.2011 from mutation in the revenue records to be affected from mutation proceedings to be forwarded with sale deed. Leave about even the purchaser did not choose to add his name that prima facie shows he got means in ordering his arrest to recover the debt and in dismissal of the application of not entitled to the protection. No doubt he contended before the lower Court of though he is shown as enjoyer of the said land in question he is not the owner since already sold under sale deed of 13.10.2011 that was negated by the Court below from having his means from his possession and enjoyment of the land in question.

5. Leave about the remedy of the purchaser under the so called sale deed if at all to file a suit for partition and claim

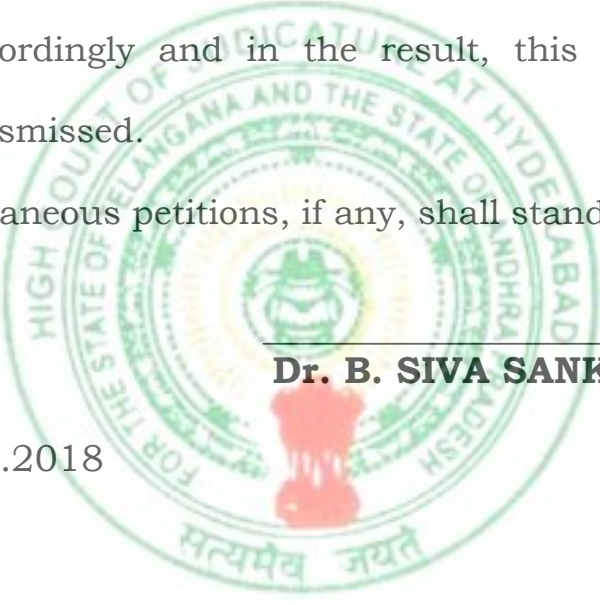
equity for that extent against the debtor executant mother, brothers and sisters if any that too without mentioned as coparcenery property the right of the creditor to proceed against the undivided against of him no way can be taken away and once that is means he cannot drive the decree holder to proceed against the property in contending of no means and in saying the entries in revenue records will not confer title. The question of conferring title first time by revenue record is not the case here for the reason the property even admittedly belongs to him and his family and allegedly sold to the purchaser on 13.10.2011 however still the property stands in his name and what he filed now the pahani copy and form-I B of July 2018 showing for the first time in the name of the so called vendee A.Ramanaiah. Needless to say a purchaser of the coparcenery undivided interest even mentioned as specific interest not entitled to the possession of the specific extent but for to file a suit for partition for the so called oral partition is not with any proof much less the others are his mother, sisters and brothers neither joined as co-executant for such mention nor attestors to the so called sale deed. Further the decree holder's right to proceed against the property is alienated pending the lis as a fraudulent transfer under Section 53 of the Transfer of Property Act cannot be taken away for same can be raised including in execution as per the settled law and the scope of Section 53 of the TP Act is very clear from the expression of

the Apex Court in **C. Abdul Shukoor Saheb v. Arji Papa Rao¹**.

6. Having regard to the above, there is nothing to interfere with the impugned order of the lower Court that too when the arrest warrant issued by order dated 28.01.2016 in EP.No.72 of 2012 clearly shows the J.Dr. got means from his owning a house worth Rs.4,00,000/- and possessed land of 4 acres worth about Rs.16,00,000/- with income therefrom besides doing milk business.

7. Accordingly and in the result, this Civil Revision Petition is dismissed.

Miscellaneous petitions, if any, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date: 21.08.2018
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¹ AIR 1963 SC 1150