

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.99 of 2017 & I.A.No.1 of 2018

Date: 24.10.2018

Between:

J.Veekata Ramana Murthy @ Srinu,
S/o.Jagannadham aged about 50 years,
R/o.House No.8-2-31,
Nalam Bhimaraju Street,
Near Main Road,
Rajahmundry,
East Godavari district.

Appellant

And

Kurmadasu Prabhakar Rao
S/o. Late Sharabu Hindu
Aged 62 years, R/o.H.No.9-33-1,
Gunduvaari Street,
Rajahmundry,
East Godavari district.

Respondent

Counsel for the Appellant : Mr. Ch.Dhanamjaya

Counsel for the Respondent: Mr. T.S. Anand

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This civil miscellaneous appeal is filed against order dated 30.01.2017 in I.A.No.1108 of 2016 in O.S.No.133 of 2016 on the file of V Additional District Judge, East Godavari district, Rajamahendravaram.

2. The respondent filed the aforementioned suit for recovery of Rs.88,22,280/- on the foot of promissory note dated 10.17.2013. He has also filed I.A.No.1108 of 2016 under Order 38 Rule-5 of C.P.C., seeking attachment of the suit schedule property belonging to the appellant. After hearing both sides, the court below has passed order dated 20.10.2016, directing the appellant to furnish security for the suit amount within five days, failing which the petition schedule property was directed to be attached. Aggrieved by the said order, the appellant has filed C.M.A.No.843 of 2016 before this Court. By order dated 24.10.2016, this court has allowed the said C.M.A. on the short ground that the order passed by the lower court was bereft of reasons and the case was remanded to the lower court for passing a fresh order. After remand, the lower court has passed a fresh order on 30.01.2017, reiterating its earlier direction. Assailing the said order, the appellant has filed the present civil miscellaneous appeal.

3. By order dated 10.02.2017, this court granted interim stay of the operation of the order of the lower court till 16.02.2017. The said order was extended by order dated 16.02.2017. Seeking vacation of the said order, the respondent has filed I.A.No.2 of 2017 (C.M.A.M.P.No.304 of 2017) to vacate the interim order. On 08.03.2017, the case was adjourned, subject to the condition that the appellant shall not alienate the suit schedule property. Alleging that the appellant has mortgaged the petition schedule property to a bank and that, thereby, he has disobeyed the order dated 08.03.2017, the respondent filed I.A.No.1 of 2018, for punishing the appellant for such disobedience.

4. Counter affidavit is filed by the appellant stating that the word 'alienation' in common parlance is understood as sale and that as the appellant has merely mortgaged the property by depositing of title deeds, such a mortgage does not amount to alienation.

5. The necessity of adjudicating as to whether the expression 'alienation' takes within its sweep mortgage, is obviated in the view this court is proposing to take. The main allegation on which the respondent has filed the application before the lower court for attachment, was that the appellant is in heavy debts and he apprehends that in order to discharge those debts, he may transfer his interest in the property, so as to defeat the rights of the respondent, in the event of his success. True to his apprehension, the appellant

has mortgaged the property, if not sold the same, evidently to discharge his debts. This subsequent event is sufficient to justify the apprehension of the respondent that if an order of attachment is not made, the appellant in all probability is likely to transfer his interest in the property to a third party, and in such an event, it would definitely affect the interests of the respondent. Even though the appellant has mortgaged the property to the bank after the court below has passed attachment order and this court directing him not to alienate the property, it would be in the interest of justice that the attachment order passed by the lower court is continued, which shall necessarily mean that the appellant shall not allow the mortgaged property to be sold, pending the suit.

6. Subject to the above direction, the civil miscellaneous appeal is dismissed and I.A.No.1 of 2018 shall stand disposed of.

7. As a sequel to the dismissal of the civil miscellaneous appeal, I.A.No.2 of 2017 (C.M.A.M.P.No.304 of 2017) shall stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 24th October, 2018

msb

