

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

CRP No.4983 of 2015

ORDER:

This Civil Revision Petition is filed questioning the order dated 04.11.2015 in EA No.148 of 2015 in EP No.68 of 2013 in OS No.41 of 1993 passed by the Senior Civil Judge, Pithapuram.

The application EA No.148 of 2015 is filed under Section 47 and 151 CPC for a declaration that the decree in OS No.41 of 1993 is not executable as the same was obtained by fraud. In addition, it is also prayed that the decree passed in AS No.185 of 1993 on the file of the V Additional District Judge, Rajahmundry, which was filed against the decree in the present OS No.41 of 1993 is also not executable. EA No.148 of 2015 has contested on merits. Oral and documentary evidence was introduced and then the impugned order dated 04.11.2015 was passed. Challenging the same, the present revision petition is filed.

This Court has heard Sri N.V. Anantha Krishna, learned counsel for the revision petitioners and Sri V.V.L.N. Sarma, learned counsel for the respondents.

The learned counsel for the petitioners reiterated what all are stated in the grounds of revision. He argued that despite the oral and documentary evidence before

the lower Court, a cryptic order was passed and in one para, the entire case was dismissed. He argued that the material facts were suppressed and that fraud was played on the Courts and decrees are obtained through fraud. Therefore, he submits that the entire proceedings are vitiated and should be set aside. It is his prayer that the Courts should have given an order that the decree is not executable.

In reply thereto, the learned counsel for the respondents states that there is absolutely no fraud in this case. The learned counsel points out that Sri Mogali Paparao, father of the petitioner in the CRP contested the appeal AS No.185 of 1999. The appellate Court passed the judgment on merits on 04.03.2010. No second appeal was filed against the judgment in AS No.185 of 1999. The learned counsel also submits that there is neither pleading nor proof of the alleged fraud. He therefore states that the application was rightly dismissed.

This Court after hearing both the counsel notices that the necessary pleading of fraud is not there. As per the provisions of Order VI Rule 4 CPC fraud has to be pleaded with certainty. The evidence that has to be introduced with respect to the fraud also has to be clear. The standard of proof in proving fraud is quite high. In

the case on hand, the petitioners were not able to prove that fraud is in fact perpetuated or played on the Courts.

It is also pertinent that Mogali Paparao, father of the present revision petitioners is the second respondent in the appeal AS No.185 of 1999. He contested the matter through an advocate. Therefore, the legal heirs of the said Mogali Paparao cannot now allege that the decree is not binding on them. No second appeal was also filed against the findings in AS No.185 of 1999. Therefore, the judgment and decree have become final. In addition, the property was also delivered and the delivery was physically effected in EP No.21 of 1989.

Therefore, this Court is of the opinion that there are no merits in the application. The decree and judgment are not vitiated in any manner. The available evidence of the deponent does not make a case of fraud.

Therefore, for all these reasons, this Court virtually holds that there are no merits in the Civil Revision Petition. The same is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 04.12.2018
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