

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5120 of 2011

ORDER:

The revision petitioners are the judgment-debtors and the revision respondent is decree-holder. A decree was passed on 28.06.1997 in O.S.No.287 of 1991, filed for specific performance of agreement of sale, dated 21.07.1988, in respect of house No.17-105 situated at S.B.H. Subordinate housing Colony, Uppal Kalan, in favour of the decree-holder/plaintiff against the judgment debtor No.1/sole defendant, directing the plaintiff to pay balance sale consideration of Rs.5,000/- within one month. The suit is decreed with costs of Rs.15,394/- against the defendant supra. Challenging the decree, dated 28.06.1997, in O.S.No.287 of 1991, the defendant preferred A.S.No.33 of 1998 and the same was dismissed on 20.04.2006. Pending the appeal the defendant died and his legal heirs i.e., judgment-debtor Nos.2 to 4 are brought on record. The decree amount of Rs.5,000/- was deposited with memo, dated 27.10.1997. The suit costs of Rs.15,394/- since not paid by the defendants/J.Drs., the decree-holder filed E.P.No.59 of 2006 seeking to issue warrant of arrest against the judgment-debtors. Questioning the executability of the decree passed in O.S.No.287 of 1991, the judgment-debtors filed E.A.No.242 of 2008, contending that the decree is void *ab initio* since the decree is now sought to be executed to a document i.e., agreement of sale, dated 21.07.1998, without being marked or expressed in the judgment and the boundaries incorporated in the decree is beyond the reflections in the judgment and when it cannot be constituted as a decree at all within the purview of law

and that decree cannot be executable as per the A.P. Amendment to Registration Act 4 of 1999, if any property is delivered under any agreement of sale, the nomenclature of such document should be that of a (conveyance) as a regular sale deed, therefore, the agreement of sale ought to have been impounded as if it is a sale deed. It is further contended that the decree passed by the trial Court is contrary to law as the mandatory requirements as contemplated under law not considered by the trial Court, that the Central Amendment by Act 48 of 2001 to the Registration Act contemplates that any documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, shall be registered and if such documents are not registered, then they shall have no effect for the purpose of Section 53-A.

The decree-holder filed counter affidavit in opposing the petition stating that it is not open for the judgment-debtors to raise the point afresh at the stage of execution proceedings and the Court cannot go beyond the decree which has attained finality by way of the judgment in A.S.No.93 of 1998 and that apart, the agreement of sale, dated 21.07.1998, was already produced before the Court and hence there is no bar for executing the decree, that there is no any illegality in the decree to render as void *ab initio*.

After hearing both sides and on perusing the material and suit record, the trial Court dismissed the petition with the observation that as per the judgment in A.S.No.93 of 1998, the agreement of sale filed and with regard to the boundaries in

question in the decree, the agreement of sale contains the boundaries to the property.

Impugning the same, the present revision is filed by the judgment debtors.

Heard both sides and perused the material on record.

It is the settled law that executing Court cannot go beyond the decree including from the expressions of the Apex Court unless the decree passed is shown inherently lack of jurisdiction by Court. It is not a case of the Court which passed the decree has inherently lacks jurisdiction. What is the contention raised on executability of the decree of the trial Court confirmed by the appellate Court by attained finality, is that the suit sale agreement was not exhibited before the trial Court. In fact it was on the record and referred in the appellate Court judgment even. The sale agreement was dated 21.07.1988. The A.P. amended Act No.4 of 1999 to the Registration Act making sale agreements compulsory registerable is with effect from 01.09.1999 and the Central amendment to Section 49 proviso of the Registration Act by Act No.48 of 2001 with effect from 24.09.2001 where the amendment equally made to Section 53-A of the TP Act making possessory sale agreement compulsory registerable, leave about a possessory sale agreement liable for impounding as a conveyance as per explanation to Article 47-A of Schedule IA of the Stamp Act with effect from 16.08.1986 by Act No.17 of 1986. In fact once the sale agreement was marked the objection relating to stamp duty later cannot be raised. Here it is the submission of the document was not marked and decree was passed. The remedy if at all to question that decree by filing appeal on own merits and

undisputedly questioned and went unsuccessful even by filing appeal by the late 1st J.Dr. since died continued by the present revision petitioners i.e., LR's of the sole appellant as appellants 2 to 4 who are the J.Drs. in the execution of the decree for costs due and payable thereunder.

Having regard to the above, it is not left open to the J.Drs. herein to question the executability of the decree that was made final by the judgment of the trial Court and that of the appellate Court even in regard to the above.

Having regard to the above, the contentions raised supra are untenable. No doubt there cannot be a personal decree against the present J.Drs. i.e., LR's of the sole defendant against whom decree for costs awarded, but for to proceed against the estate of the 1st defendant in the hands of the present J.Drs. if any.

With these observations and subject to above modifications, the Civil Revision Petition is disposed of for nothing more to interfere with the dismissal order of E.A.No.242 of 2008 in E.P.No.59 of 2008 by the executing Court.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 20.02.2018
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