

HON'BLE SRI JUSTICE S.V. BHATT

CIVIL REVISION PETITION No.874 OF 2016

ORDER (ORAL):

Heard Sri P. Sri Raghu Ram, learned senior counsel for revision petitioner - judgment-debtor No.2, and Sri A.P. Venugopal, learned counsel for respondent No.1 - decree-holder.

2. For convenience, the parties are referred as judgment-debtor No.2 and decree-holder.

3. The decree-holder in O.S. No.66 of 1984 filed E.P. No.78 of 2013 under Order - XXI Rule - 11 Clause (1) of Code of Civil Procedure, 1908 (for short 'CPC') for execution of sale deed in terms of the decree and the judgment in O.S. No.66 of 1984 dated 19.08.1995. Late Shaik Ismail was the defendant in O.S. No.66 of 1984. Judgment-debtor No.2 - revision petitioner herein is his son.

4. E.A. No.27 of 2015 was filed by judgment debtor No.2 under Section 47 and Order - XXI Rule 91 of CPC praying for declaration that the execution petition is not maintainable in view of the non-existence of the DHR Society and also due to lack of the authority to represent the Society and by the change of the land and existence of other owners under the registered documents and for costs.

5. Sri P. Sri Raghu Ram has limited his submissions only to the available grounds under Section 47 of CPC. The objections raised in this behalf against the maintainability of execution petition are that the

decree-holder society is not in existence and according to judgment-debtor No.2, the fact of dissolution of the society is not brought to the notice of the Court and in effect by suppressing these details, E.P. is filed. While maintaining E.P. No.78 of 2013, it is the duty of the decree-holder to furnish all details about the society including the various orders of renewal of registration granted from time to time in favour of the decree-holder. The filing of execution petition by the decree-holder represented by the present president Surakasi Venkata Sreenivasarao, firstly, is illegal and secondly, at the instance of the present president, the execution petition ought not to have been entertained by the executing Court. Judgment-debtor No.2, in other words, objects to the institution of execution petition at the instance of Surakasi Venkata Sreenivasarao. Briefly, the objection on maintainability of execution petition is that the decree-holder society is a non-functional society, the accounts of the decree-holder society are not audited and as a matter of fact, in law, there is no legal entity to maintain the execution petition.

6. The decree-holder filed counter-affidavit. Briefly stated, the reply to the objection on maintainability is that the society is registered under Andhra Pradesh Co-operative Societies Act, 1964. The society is represented by the president in office. The accounts of the society are audited from time to time and the latest audit report is filed as one of the annexures in the execution petition. The objection at the instance of judgment-debtor No.2 on the maintainability, therefore, is untenable and liable to be rejected.

7. Judgment-debtor No.2 filed affidavit in lieu of chief-examination and judgment-debtor No.2 was cross-examined and operative portion of the cross-examination reads thus:

“I filed S.M.P. before Hon’ble Supreme Court against the order of Hon’ble High court and it is dismissed. I studied 4th class. My chief-examination affidavit read over to me. I did not see any papers filed along with the counter. Varre Adi Seshu informed me that the respondent society is not functioning. I did not cause any enquiry in the office of Registrar of Cooperative Society whether the society is in existence or not. I did not ask my advocate whether the respondent society filed any documentary proof about the functioning of the society. I do not know anything about the audit report, for the year 2012-2013, in respect of DHR Society filed along with the counter, on 24-2-2015. I did not verify as to what documents were filed along with the E.P. whether any documents were filed by the Decree holder along with E.P.,. I did not even find out from my advocate whether any documentary proof is filed about the powers of the President and the existence of the society. It is not true to suggest that I am aware of the extract of the resolution of the DHR society., dt.20-08-2012 and inspite of that, I am claiming no documentary proof is filed. I did not ask my advocate on record, as to what documents were filed by the DHR in the E.P. and this Claim petition. It is not true to suggest that I know along with the counter of the DHR society filed final audit report for the year 2012-13 issued by the District Cooperative Audit Office, on that the DHR society is in existence and is getting the accounts audited, by the authority appointed under the Act. It is not true to suggest that knowing through the contents that the society is in existence that it is functioning and is filing accounts before the audit office and that audit officer has been giving audit

certificate. I have stated in my chief-affidavit that the society is not in existence and it is not functioning and as such, the E.P. is not maintainable. It is not true to suggest that the person who filed the E.P. has got power to file the E.P.,.”

Therefore, it is the case of the decree-holder that the objection is unsustainable in law, liable to be rejected and these objections are rightly rejected by the Court below.

8. The executing Court by looking at the audit report and cross-examination of judgment-debtor No.2 overruled the objections and dismissed E.A. No.27 of 2015. Hence, the civil revision petition.

9. The learned senior counsel contends that the description of cause title in O.S. No.66 of 1984 reads as, Sri Lakshmirama Co-operative Building Society Limited represented by its president Varre Adi Seshu, but the cause title shows that Varre Adi Seshu is no more the president and execution petition was filed by the decree-holder society represented by its president Surakasi Venkata Sreenivasarao. Unless and until there is documentary evidence to show that the person who represents the society is said to have authorization, execution petition at the instance of Surakasi Venkata Sreenivasarao in his capacity is not maintainable. The learned senior counsel fairly submits that, either by not auditing the accounts or not obtaining the renewal, the legal entity conferred on the registration of society does not cease to have its effect, but in the peculiar circumstances of this case, the representation of society by a person not shown in the cause title makes all the

difference. Therefore, the judgment-debtor cannot be called upon to execute the sale deed. Therefore, the objections raised by judgment-debtor No.2 ought to have been appreciated and upheld by the executing Court.

10. On the contrary, Sri A.P. Venugopal contends that these objections are raised without properly verifying the record in E.P. No.78 of 2013. According to him, decree-holder is a society registered under the A.P. Cooperative Societies Act, 1964, to contend that the society does not exist in law, one or the other circumstance stated from Section 64 of the A.P. Cooperative Societies Act, 1964 is shown by the objector. He further contends that, in support of decree-holder's existence, the decree-holder has filed final audit report dated 31.03.2015. Judgment-debtor No.2 is not entitled to raise the objection whether the Society is functional or dysfunctional. According to him, the sale deed, ultimately, if executed in the instant E.P., the sale deed would be executed in favour of the society, but not in favour of an individual represented either by 'A' or 'B', therefore these objections are not founded on legal principles and these objections at the instance of judgment-debtor No.2 are liable to be rejected outright.

11. I have perused the record and noted the submissions of the learned counsel appearing for the parties. This Court after appreciating the cross-examination of judgment-debtor No.2 is convinced that the matter does not require detailed consideration.

12. At the first blush, this Court was persuaded to go deep into the matter in appreciating the objection raised by judgment-debtor No.2. After perusing the cross-examination of judgment-debtor No.2 by the decree-holder, this Court is of the view that the present application under Section 47 of CPC is made without properly verifying the documents which are filed along with the execution petition. Further, during and in the course of cross-examination, judgment-debtor No.2 admits contrary to what is stated in the application filed under Section 47 of CPC. After perusing the copies of the final audit report and the resolution passed by the society in the year 2012, I am satisfied that the objection is rightly considered by the executing Court and recorded the following finding:

“6. Point:-

It is the version of the claim petitioner/1st JDR that his father had entered into an agreement of sale, as per the pleadings in the main suit filed by the respondent/DHR and subsequently after disposal of the 1st Appeal before the Hon'ble High Court, the schedule property was divided into plots and sold to different purchasers. It is the version of the petitioner that the 1st respondent Society became non-existence due to the lack of the Renewal and functioning and therefore the Execution Petition which was filed subsequently in the year, 2013 is not maintainable due to lack of the authority to represent the Society and also due to the change of the land and existence of other owners under registered documents.

7. It is the version of the respondent/DHR that the respondent Society is in-existence and the person who filed the present E.P. also got power to file the same.

PW1/Claim Petitioner during his cross-examination admitted that he filed C.M.P., before the Hon'ble Supreme Court against the Orders of the Hon'ble High Court and the same is dismissed. He deposed that he did not see the papers filed by the respondent/DHR along with the Counter in the present petition. He deposed that he do not know anything about the audit report for the year, 2013 in respect of the respondent/DHR Society which was filed along with the Counter. He denied for the suggestion that having knowledge that the respondent/DHR Society is in-existence and the same is functioning by filing accounts before the audit office, he filed the present claim petition.

8. By perusing the petition, counter and the evidence of the claim petitioner, it is to be seen that it is the only version of the petitioner/claim petitioner that the respondent/DHR Society was not in-existence and he was not disputing with regard to the decree passed in favour of the respondent/DHR and the Orders passed by the Hon'ble High Court in favour of the respondent/DHR. By perusing the documents filed along with the Counter in the present petition i.e., audit certificate etc., it is to be seen that the version of the claim petitioner is not correct and thereby he failed to prove his version. Hence, I find no merits in the present petition. Therefore, he is not entitled for the relief as prayed for. Hence, the Point is answered against the petitioner.”

The objections now initiated are untenable and I am convinced that no ground is made out warranting interference under Section 115 of CPC.

13. The Civil Revision Petition fails and is accordingly dismissed. The executing Court is directed to pass final orders in the execution petition as expeditiously as possible preferably within a period of six (6)

weeks from the date of receipt of a copy of this order. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in this civil revision petition stand closed.

S.V. BHATT, J

November 28, 2018.

PV

