

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.119 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.26-12-2018 in E.P.No.158 of 2017 of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the Judgment-Debtor.
3. The back-ground facts of the case are as follows:
4. One B.Omkar Rao availed a loan from Andhra Bank and K.Raghaveshwara Rao, father of respondents, stood as a guarantor by depositing his title deed i.e. registered sale deed bearing Doc.No.1432/1964 of a plot of land along with link documents.
5. As the borrower did not repay the loan amount, the Andhra Bank filed O.S.No.226 of 1973 against B.Omkar Rao and K.Raghaveshwara Rao for foreclosure of the mortgaged debt and obtained a final decree for sale of the property.
6. The Andhra Bank then filed E.P.No.49 of 1990 for execution of the final decree and obtained orders for auctioning the property.
7. After noticing the auction notice in the news paper, the petitioner herein filed a Claim Petition E.A.No.96 of 1999 in E.P.No.49 of 1990, which was dismissed for default.

8. Petitioner then filed C.M.A.No.668 of 2001 in this Court and obtained stay of all further proceedings in E.P.No.49 of 1990.

9. Thereafter Andhra Bank assigned the decree passed in O.S.No.226 of 1973 in favour of M/s.Greater Banjara Housing Society by executing a registered assignment deed dt.30-04-2003.

10. Subsequently, C.M.A.No.668 of 2001 was withdrawn.

11. Thereafter the Judgment-Debtors sought permission to deposit the decretal amount due to under the decree and also sought for return of their documents.

12. Initially, their applications in that regard were dismissed, but later by virtue of orders of Review dt.14-06-2003 in E.A.No.144 of 2004, they were permitted to deposit the debt due under the decree and to set aside the decree. Once the decretal debt was cleared, K.Raghaveswara Rao was entitled for return of the documents which had been mortgaged with the Bank and which thereafter passed into the hands of petitioner, who was representing M/s.Greater Banjara Housing Society as its Secretary on execution of registered Assignment deed dt.30-04-2003.

13. So the respondents filed E.A.No.56 of 2009 in E.P.No.49 of 1990 for return of documents deposited by K.Raghaveswara Rao with Andhra Bank, which was dismissed on 21-01-2013.

14. Challenging the same, C.R.P.No.1149 of 2013 was filed before this Court by respondents. The said C.R.P. was allowed on 28-04-2014 and E.A.No.56 of 2009 was allowed by this Court.

15. This order was not challenged by the petitioner and it attained finality.

16. Respondents then filed C.C.No.1903 of 2014 before this Court complaining that petitioner did not return the documents.

17. The said Contempt Case was disposed of on 27-02-2015 directing the petitioner to deliver the documents as per orders of the Court within two months and failing such compliance, respondents shall approach the Court of Execution and file appropriate Execution application and seek remedy which the law permits.

18. Respondents then filed E.P.No.129 of 2015 before the V Senior Civil Judge, City Civil Court, Hyderabad seeking detention of petitioner in civil prison alleging non-compliance of the orders passed by this Court in C.C.No.1903 of 2014.

19. Petitioner then filed E.A.No.516 of 2016 in E.P.No.129 of 2015 under Section 47 of C.P.C. challenging the maintainability of the Execution Petition.

20. The said E.A.No.516 of 2016 was allowed and respondents were permitted to file Execution Petition for execution of the order dt.28-04-2014 passed in C.R.P.No.1149 of 2013.

E.P.No.158 of 2017

21. Respondents then withdrew E.P.No.129 of 2015 and filed E.P.No.158 of 2017 for execution of the order dt.28-04-2014 passed by this Court in C.R.P.No.1149 of 2013 i.e. to direct the petitioner to return the original title deed i.e. the registered sale deed bearing Doc.No.1432/1964, and failing which to detain him in civil prison.

22. Petitioner filed a counter stating that E.P. is not maintainable in the eye of law and on facts and sought to dismiss the same.

23. He further stated that Andhra Bank assigned the decree in favour of M/s.Greater Banjara Housing Society represented by its Secretary; in spite of knowing the said factum of assignment in favour of the Society, respondents did not choose to implead the Society as a party to the proceedings; and that there was no decree or order passed against the petitioner which can be executed against him; and the documents were not in his custody and were received by the Society from Andhra Bank. He therefore denied that there was any willful disobedience of the orders passed by this Court and prayed for dismissal of E.P.No.158 of 2017.

ORDER DT. 26-12-2018 IN E.P.No.158 of 2017

24. The Court below allowed E.P.No.158 of 2017 on 26-12-2018. The Court below relied upon the observations made in the order dt.28-04-2014 in C.R.P.No.1149 of 2013 that petitioner had stepped into the shoes of the Decree-holder-Bank as an assignee of the decree obtained by the said Bank and had taken return of the title

deeds/documents in respect of the mortgaged property; so he was bound under facts and law to return the documents to respondents; and respondents are therefore entitled for return of the sale deed dt.02-08-1964 along with other documents, which were deposited at the time of mortgage transaction with the Bank and that this Court had allowed E.A.No.56 of 2009.

25. Though the petitioner contended that he had received the documents from the Andhra Bank in the capacity of Secretary of M/s.Greater Banjara Housing Society only, the Court below rejected the same stating that the order in the C.R.P. having become final and the petitioner, not having challenged the same, he cannot now dispute the correctness of the High Court order. It further recorded that it was the petitioner, who received the subject documents from the Andhra Bank and now he cannot disown his liability to return the documents to the Decree-holders by contending that he did not receive the documents from Andhra Bank in his personal capacity. It rejected the plea of the petitioner that in E.P.No.49 of 1990 and in E.A.No.56 of 2009, the Society is not a party and those petitions/applications were bad for non-joinder of Society as a party.

26. It rejected the contentions of the petitioner that there was no decree against the Judgment-Debtor, and held that the order of the High Court in C.R.P.No.1149 of 2013 is required to be executed, and the Decree-Holders are entitled to execute order of the High Court by availing the provisions relating to execution of decrees, and they cannot be denied of opportunity to realize the fruits of the order of the

High Court in C.R.P.No.1149 of 2013 on the ground that there was no separate decree or decretal order to be enforced against the petitioner.

27. It also rejected the contention of the petitioner that he cannot be arrested and put in civil prison and held that there is no other effective mode of execution available under law to enforce the order passed by the High Court in C.R.P.No.1149 of 2013.

28. A further contention was also raised by the petitioner that the mortgaged property itself was not in existence. This plea was not accepted by the Court below stating that in the Execution Petition, it is not permissible for the Court to go into the existence or otherwise of the mortgaged property and it is only concerned with the issue whether the J.Dr. had complied with the direction given by the High Court in C.R.P.No.1149 of 2013.

29. It also stated that once the High Court had held that petitioner was bound to return the documents to the Decree-Holders, the Executing Court cannot make an enquiry into the availability or otherwise of the documents with the Judgment-Debtor and it has to execute the High Court order as it is.

30. It therefore directed the Judgment-Debtor be arrested and detained in civil prison, if he fails to return the documents to the Judgment-Holders within one month from the date of its order.

THE PRESENT CRP

31. Assailing the same, this Revision is filed.

32. Heard Sri Gopal G. Naik, learned counsel for petitioner and Sri D.Siva Kumar, learned counsel for respondents.

33. Learned counsel for petitioner again reiterated the stand taken by petitioner in the Court below and contended that he had received the sale deed i.e. Doc.No.1432/1964 only on behalf of M/s.Greater Banjara Housing Society as its Secretary and not in his personal capacity and therefore he is not bound to comply with the order passed by this Court on 28-04-2014 in C.R.P.No.1149 of 2013.

34. Learned counsel for respondents supported the order passed by the Court below and reiterated that the Executing Court cannot go behind the order dt.28-04-2014 in C.R.P.No.1149 of 2013; and since petitioner did not challenge the said order, wherein this Court allowed E.A.No.56 of 2009 and directed the petitioner to return the documents deposited by the father of respondents with Andhra Bank, the said order has attained finality and the petitioner is bound by the said order.

35. I have noted the contentions of both sides.

36. From the facts narrated above, it is clear that B.Omkara Rao availed loan from the Andhra Bank, for which transaction one K.Raghaveswara Rao, father of respondents stood as a guarantor by depositing his title deed i.e., registered sale deed bearing Doc.No.1432/1964 along with link documents.

37. Since the borrower failed to repay the loan amount, the Andhra Bank filed O.S.No.226 of 1973 against the B.Omkar Rao and

K.Raghaveswara Rao for fore-closure of the mortgage debt and obtained a final decree on 23-07-1977.

38. Later it assigned the decree in favour of M/s.Greater Banjara Housing Society by executing a registered assignment deed dt.30-04-2003.

39. Petitioner was the Secretary of the said Society and he took return of the title deeds/documents from the Andhra Bank.

40. Thereafter the Judgment-Debtors sought permission to deposit the decretal amount due to under the decree and also sought for return of their documents.

41. Initially, their applications in that regard were dismissed, but later by virtue of orders of Review dt.14-06-2003 in E.A.No.144 of 2004, they were permitted to deposit the debt due under the decree and to set aside the decree.

42. Once the decretal debt was cleared, K.Raghaveswara Rao was entitled for return of the documents which had been mortgaged with the Bank and which thereafter passed into the hands of petitioner, who was representing M/s.Greater Banjara Housing Society as its Secretary on execution of registered Assignment deed dt.30-04-2003. Consequently petitioner would have to return the title deeds/documents in respect of the mortgaged property.

43. This is what this Court held in its order dt.28-04-2014 in C.R.P.No.1149 of 2013.

44. It is important to note that in the said Revision, no contention was advanced by the petitioner that he was not having possession of the registered sale deed bearing Doc.No.1432/1964 along with link deeds. No explanation is forthcoming from the petitioner why such a plea was not canvassed before this Court in C.R.P.No.1149 of 2013. When such a plea was available to the petitioner and he did not canvass it in the Revision, and when steps are taken by the respondents to execute the said order passed in C.R.P.No.1149 of 2013, the petitioner cannot be permitted to raise such a plea and such a plea would be barred by constructive *res judicata*.

45. Explanation-VII to Section 11 C.P.C. makes applicable the principles of *res judicata* to proceedings for execution of the decree also.

46. The Supreme Court in **Kamalabai Vs. Mangilal Dulichand Mantri¹** and **Lagan Jute Machineries Co. Ltd. Vs. Candlewood Holdings Ltd. and others²** held that principles of constructive *res judicata* are applicable even to execution proceedings.

47. It is not the case of the petitioner that he had questioned the order dt.28-04-2014 in C.R.P.No.1149 of 2013 in the Supreme Court of India and got it set aside. Once the said order has attained finality, he cannot make the Executing Court to go behind the said order raising new pleas and thwart the attempts of the respondents to get back the title deeds and other link documents mentioned above.

¹ (1987) 4 SCC 585

² (2007) 8 SCC 487

48. As rightly held by the Court below, the Executing Court cannot go behind the order dt.28-04-2014 in C.R.P.No.1149 of 2013 and the petitioner cannot raise new pleas before the Executing Court which were not raised earlier. It had also correctly held that there is no other mode of execution of the order passed in C.R.P.No.1149 of 2013 except by way of arrest of the judgment-debtor, if he did not return the title deed and link documents.

49. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India.

50. Accordingly, the Revision Petition fails and is dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by petitioner to respondent Nos.1 to 3.

51. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-03-2019

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