APHC010637022022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3311]
(Special Original Jurisdiction)

MONDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 2549/2022

Between:

Moghal Rizwan Baig **...PETITIONER**

AND

Jampani Venkateswarlu **...RESPONDENT**

Counsel for the Petitioner:

Sri. ROSEDAR SRA

Counsel for the Respondent:

Sri. P V RAGHU RAM

The Court made the following:

ORDER:

This revision under Article 227 of the Constitution of India is filed assailing the order, dated 20.10.2021, allowing I.A.No.176 of 2021 in A.S.No.12 of 2021 on the file of the Court of the Senior Civil Judge, Kavali, filed under Order 41 Rule 5 and Section 151 CPC seeking stay of all further proceedings for execution of the final decree passed in I.A.No.1186 of 2006 in O.S.No.70 of 2000 on the file of the Court of the Principal Junior Civil Judge, Kavali.

2. Heard the learned counsel for the parties.

3. The case of the petitioner/appellant, in brief, is as follows:

a. The 1st respondent/plaintiff brought a collusive suit in O.S.No.70 of 2000 on the file of the Court of the Principal Junior Civil Judge, Kavali, for the relief of partition. The petitioner/ appellant purchased an extent of Ac.1.50 cents in Sy.No.1575 under a registered sale deed, dated 31.07.1986. The vendors of the petitioner got the property under two deeds, viz., i) registered sale deed, dated 26.01.1979, executed by Yesdhanbe and Sagara Begum in favour of Mogal Habib Beig to an extent of Ac.0.50 cents, i.e., item No.2, plot "b" out of Ac.1.50 cents in Sy.No.1575; and (ii) registered sale deed dated 09.02.1979 executed by Sagara Begum including 1st respondent and others in favour of Mahaboob

Bee to an extent of Ac.0.50 cents, i.e., item No.2, plot 'b' out of Ac.1.50 cents in Sy.No.1575. The 1st respondent/petitioner is a party to these documents. Suppressing the truth and without seeking cancellation of the above registered sale deeds, a suit for partition was fraudulently filed and a collusive decree was obtained, and I.A.No.1188 of 2006 was filed by the 1st respondent for grant of final decree.

b. The trial Court, without considering the objections of the petitioner and without giving an opportunity to adduce evidence on his behalf and also without hearing him, passed the final decree on 24.03.2021 in O.S.No.70 of 2000. The trial Court did not discuss the objections raised by the appellant in the final decree and the suit itself is not maintainable. The trial Court passed the final decree solely on the basis of a report filed by the advocate commissioner by delegating powers of division of property to the commissioner. The appellant has got *prima facie* case and balance of convenience. Item No.2, plot (b) of the suit schedule property is his exclusive property having been purchased under a registered sale deed, dated 31.07.1986, from its original owners. Though the appellant has been in possession of item No.2, plot (b) of suit schedule property since the date of its purchase in the year 1986, under the guise of final decree, the 1st respondent is making hectic efforts to

get the decree executed. If the 1st respondent is allowed to take possession of the property, the appellant will suffer serious loss.

4. The respondent/revision petitioner herein, filed counter denying the averments and contending that the trial Court appointed an advocate commissioner and partition was effected and the property was divided into 40 shares and 14 shares were allotted to the respondent herein and accordingly, final decree was passed. The petitioner was served with notice in the suit proceedings and after receipt of summons, the petitioner did not turn up and the court passed preliminary decree against which no appeal is preferred and as such the rights determined therein became final and conclusive and the same cannot be questioned now. The trial Court gave 14 years time to the respondent. The petitioner never appeared before the lower court nor preferred any appeal against the preliminary decree. The petition is not maintainable and is liable to be dismissed.

5. The trial Court allowed the petition holding that if the execution of the final decree, dated 24.03.2021 in I.A.No.1188 of 2006 in O.S.No.70 of 2000 is not stayed, the very purpose of filing the appeal would be defeated and that the appellant would sustain loss.

6. Aggrieved thereby, this revision petition is filed.

7. The learned counsel for the revision petitioner contended that the appellate Court erred in granting interim stay due to which, the proceedings after final decree have been hampered, though the respondent/appellant failed to contest the final decree and now filed the appeal challenging the preliminary decree stating that *ex parte* decree ought not to have been granted.

8. He further submitted that though interim stay was initially granted till 18.11.2021, it is being extended from time to time and is still in force. He further stated that appeal is not being heard, though it is ripe for hearing, and therefore, interim order of stay is causing hardship to the petitioner.

9. On the other hand, the learned counsel for the 1st respondent herein stated that the appellate Court has rightly granted interim stay for the reasons stated in the order or else the purpose of filing the appeal would be defeated.

10. Considering the submissions of both sides, this Court is of the view that the appellate court can be directed to expeditiously dispose of the appeal within two months from the date of receipt of copy of this order to secure the ends of justice and balance the interests of both parties.

11. Subject to the above observations, the revision petition is disposed of.

There shall be no order as to costs.

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

_____

B. S. BHANUMATHI, J

05-08-2024
RAR