



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEAL No.565 of 2021

Between:

Nerella Dharmendra, S/o. Vemulaiah

... APPELLANT

AND

Sanka Prasad, S/o. Narahari Rao and another

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED : 14.12.2021

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No
2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the order? Yes/No

M.VENKATA RAMANA, J



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ S.A.No.565 of 2021

% Dated : 14.12.2021

Between:

Nerella Dharmendra,S/o.Vemulaiah

... APPELLANT

AND

\$ Sanka Prasad, S/o.Narahari Rao and another

... RESPONDENTS

! Counsel for appellant : Mr. Raja Reddy Koneti

^Counsel for Respondents : Smt.C.Brahmaramba

<GIST :

>HEAD NOTE:

? Cases referred:

1. AIR 2014 Supreme Court 1356
2. 2004(5) ALD 82
3. (2009)7 SCC 363
4. 2021 Supreme (Madras) 872
5. 2021(1) CTC 830
6. AIR 1939 Mad 702 = (1939)2 M L J 822

M.VENKATA RAMANA, J



HON'BLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEAL No.565 of 2021

JUDGMENT:

The appellant instituted E.A.No.133 of 2014 in E.P.No.6 of 2014 in O.S.No.62 of 2010 on the file of the Court of learned Senior Civil Judge, Mangalagiri, against the respondents.

2. The first respondent was the decree-holder in E.P.No.6 of 2014 in O.S.No.62 of 2010 and the second respondent was the Judgment-debtor therein.

3. E.P.No.6 of 2014 in O.S.No.62 of 2010 was filed in execution of the decree in the suit and mode of execution sought is by sale of the E.P. schedule property.

4. Smt.Thunuguntla Swaroopa Lakshmi is the sister of the second respondent. The appellant had purchased 'A' schedule property mentioned in his claim petition from Smt.Thunuguntla Swaroopa Lakshmi along with other properties under a registered sale deed dated 29.01.2011. According to the appellant, this sale deed was preceded by a registered agreement for sale dated 31.07.2010.

5. The first respondent got E.P. schedule property attached before judgment in I.A.No.824 of 2020 in O.S.No.62 of 2010 and it was effected on 13.05.2020.

6. Contending that sale of the property purchased by him from the sister of the second respondent in Court auction is proper and legally tenable, since it exclusively belonged to his vendor, the appellant requested to raise attachment in terms of Order XXI Rule 58 CPC in his claim petition in E.A.133 of 2014. His further contention before the executing Court was that the second respondent and his vendor



Smt.Thunuguntla Swaroopa Lakshmi had entered into a relinquishment deed dated 29.04.2010 whereby his vendor was given the property, which is subject matter of sale in the execution petition. According to him, this property could not have been attached since it belonged to his vendor exclusively, over which the second respondent has no right or interest and which cannot be sold in execution of the decree. Asserting his exclusive right, title and interest to this property, the appellant required the executing Court to declare that he is the absolute owner of this property with which the second respondent has no concern and raise the attachment.

7. The first respondent - decree-holder resisted his claim on several grounds, particularly questioning the alleged sale in favour of the appellant, not only as an outcome of collusion but also on account of the collusion between the second respondent and his sister, who brought out a registered relinquishment deed. The main defence of the first respondent to consider at present is that the sale deed dated 29.01.2011 in favour of the appellant was obtained from his vendor when this property was under attachment effected lawfully by orders of the trial Court and therefore cannot bind his rights. He further contended that the attempt of the appellant is to delay the execution proceedings, at a belated stage brought out designedly.

8. Before the executing Court, evidence was let in by the parties, both oral and documentary. Upon considering the material and evidence, the executing Court mainly considered the effect of Section 64 CPC and held that the sale in favour of the appellant being void, since entered into during subsistence of attachment directed by the Court of this property. Thus, the executing Court did not accept upon the request of the appellant



leading to dismissal of his claim petition. Learned appellate Judge confirmed the dismissal of the claim petition of the appellant.

9. This second appeal is presented in these circumstances.

10. At the stage of admission, Sri Raja Reddy Koneti, learned counsel for the appellant is requested to address about maintainability of this second appeal, particularly, in the light of the application of Section 64 CPC and maintainability of the claim petition by the appellant under Order XXI Rule 58 CPC.

11. Thereupon, Sri Raja Reddy Koneti learned counsel for the appellant and Smt.C.Brahmaramba, learned counsel for the first respondent, who had entered caveat on his behalf addressed arguments.

12. Without going into other aspects touching upon the merits of this case, the effect of Section 64 CPC alone is considered now and in relation to given facts and circumstances.

13. Section 64 CPC reads as follows:

“Private alienation of property after attachment to be void: Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.”

14. It relates to private alienation of property and by virtue of Section 64(1) CPC, it declares alienation of such property void as against all claims enforceable under the attachment.

15. Admittedly the property claimed by the appellant under the sale deed dated 29.01.2011 was attached before judgment on 13.05.2020.



Therefore, purchase of the property by the appellant was subsequent to attachment so effected.

16. In view of Section 64(1) CPC, the sale in favour of the appellant is thus void.

17. Sri Raja Reddy Koneti, learned counsel for the appellant contended that the property so purchased by the appellant belonged to Smt.Thunuguntla Swaroopa Lakshmi, sister of the first respondent and in view of relinquishment deed executed by the second respondent in her favour and registered on 29.04.2010, this property belonged to her over which the second respondent had no right or interest. Therefore, learned counsel for the appellant contended that this property could not have been attached particularly having regard to Section 60 CPC, which provides for attachment of the property belonging to the judgment-debtor. In these circumstances, learned counsel contended that despite the sale of this property in favour of the petitioner subsequent to the attachment of the property ordered by the Court, it has no effect and therefore, Section 64 (1) CPC will not apply.

18. Smt.C.Brahmaramba, learned counsel for the first respondent referring to the instances whereby the transaction covered by the sale deed dated 29.01.2011 in favour of the appellant was brought out in such a manner to obstruct the execution of the decree by the decree-holder, it is contended that all the instances referred to by learned counsel for the appellant are collusive. Resting on the effect of Section 64(1) CPC, learned counsel for the first respondent contended that the objection raised by the appellant in terms of Order XXI Rule 58 CPC cannot stand.



19. Sri Raja Reddy Koneti, learned counsel for the appellant in support of his contention relied on *MAYA DEVI v. LALTA PRASAD*¹ and *G.VIJAYALAKSHMI v. PROGRESSIVE FINANCE CORPORATION, SECUNDERABAD*².

20. Relying on *Maya Devi*, it is the contention of Sri Raja Reddy Koneti, learned counsel for the appellant that the Court has to determine all the questions relating to right, title and interest in between the parties and therefore, a separate suit as such is not permissible. Reliance is placed in this context in Para - 26 of this ruling, which is as follows:

“In this backdrop, it needs to be kept in perspective that Order XXI, Rule 97 to Rule 101 CPC envisage the determination of all questions in Execution proceedings and not by way of an independent suit. The Executing Court, therefore, was duty bound to consider and decide the objections filed by the appellant with complete care and circumspection. I regret to record that this has not been done. The objections came to be dismissed on 23.07.2010 with brevity bordering on dereliction of duty, in the following manner:

-----It has been submitted by the counsel for the objector that the applicant is the absolute owner of the suit property by virtue of General Power of Attorney which was registered on 12.05.2006 and she is in actual physical possession of the suit property but the counsel for the Decree-holder has stated that the objector has no legal right, title or interest as the execution of the General Power of Attorney and its registration does not confer any ownership right in favour of the applicant/objector. The counsel for Decree-holder has also relied upon the judgment of the Hon'ble Supreme Court in case titled as *Suraj Lamp and Industries Private Limited Vs. State of Haryana and another*³.”

¹ AIR 2014 SUPREME COURT 1356

² 2004(5) ALD 82

³ (2009) 7 Supreme Court Cases 363



21. Smt.C.Brahmaramba, learned counsel for the respondent in support of her contention relied on **ANNAKKILI v. MURUGAN AND OTHERS**⁴ and **SARADAMMAL AND OTHERS v. SANKARALINGAM**⁵.

22. In **Saradhammal**, one of the learned Judges of Madras High Court referred effect of Order XXI Rule 54 CPC, Order XXXVIII Rule 5 CPC, Section 64 CPC and Section 52 of Transfer of Property Act in Paras 14 to 16 and they read as under:

“14. The purpose of Order 21 Rule 54 (2) of C.P.C which contemplates proclamation of attachment at prominent places like Court House and Village Office including beat of drum or other customary mode is to make public the attachment and put them alert about the court’s restriction.

15. The provision of proclamation of the order of attachment has been made in sub-rule (2) of Rule 54 of Order 21 C.P.C is with the object to prevent the judgment debtor from transferring or charging the property in anyway and all other persons taking any benefit thereunder. This provision is for the innocent buyers benefit to prevent them from falling prey to any debtor alienating his encumbered property to gullible buyer suppressing the fact of attachment. This provision cannot be taken advantage by parties whose knowledge of ABJ expressly stated in the deed. It is obvious from Ex.B.4, the buyer had wagered on the promise of his vendor who was pursuing the money suit.

.....

16. Order 38 Rule 5 of C.P.C provides to prevent the Act of deceit by alienating the property pending suit. Section 64 of C.P.C declares any private alienation when attachment in force as a void transaction. [Section 52](#) of Transfer of property Act, prohibits transfer of property affecting the right or interest of the other parties pending suit. If one reads Section 64 of C.P.C and [Section 52](#) of the Transfer of Property Act, along with Order 38 of C.P.C will invariably come to the conclusion that, in the instant case, the transfer of an immovable

⁴ 2021 Supreme (Madras) 872

⁵ 2021(1) CTC 830



property under attachment with knowledge about the attachment has to fall.”

23. Effect and operation of void nature of such transaction against all claims enforceable under the attachment is well stated in **Diravyam Pillai and Another vs. Veeranan Ambalam and Others**⁶ as under:

“All that Section 64 of the Code provides is that any private transfer by the judgment-debtor of the property attached shall be void as against all claims enforceable under the attachment. It will not be accurate to read Section 64 as putting an end to the power of sale, because as between the transferor and the transferee, the alienation will undoubtedly be operative. If the attaching creditor is paid off or for any reason the attachment ceases to subsist, the alienee’s title will be unassailable. The only effect of Section 64 is that such transfer shall not prejudice the rights of the attaching creditor.”

24. In the context of the fact situation, the nature of sale in favour of the appellant being during subsistence of attachment of the property covered by it, squarely attracted Section 64(1) CPC and therefore, it is void. However, this transaction being void is against all the claims enforceable under the subsisting attachment. Thus, Section 64(1) CPC, did not render a sale transaction between the purchaser and the vendor in such circumstances, void. In a private transfer of this nature, the transfer of right, title and interest between his vendor and the appellant remained intact.

25. By reason of this bar under Section 64(1) CPC, the one who can object such alienation pending attachment are those who have enforceable claims thereunder, against such property attached. Hence, when the first respondent stands in such position, whose claim by the date of the sale in favour of the appellant by his vendor was subsisting, he has right to enforce his claim against such property. The bar so contemplated under Section

⁶ AIR 1939 Mad 702 = (1939)2 M L J 822



64(1) CPC is not of such nature, that considers whether the person against whom an order of attachment of property was issued, has a subsisting right or interest to it or not.

26. Thus, the attachment so effected operates against the property. Therefore, in the light of operative extent of Section 64(1) CPC, the contention of Sri Raja Reddy Koneti is that this property so attached did not belong to the second respondent by the date of attachment and it belonged to the vendor of the appellant, which is protected by Section 60 CPC cannot stand. Until the claim of the first respondent is satisfied, on account of the attachment so continuing and subsisting, the appellant has to bear the effect of Section 64(1) CPC with reference to his alleged purchase of the property from his vendor under the registered sale deed dated 29.01.2011. The bar so created is absolute and did not permit any exception to dilute its effect. When the object and purpose of this provision is to protect the interests of the decree-holder, against any possible sham, collusive and make believe transactions, it has to be strictly applied.

27. Contention of Sri Raja Reddy Koneti, learned counsel for the appellant that in terms of Order XXI Rule 58 CPC, all such questions relating to right, title and interest should be considered in the light of what is laid down by Hon'ble Supreme Court in **Mayadevi**, is proper. The present situation in this second appeal is governed by Section 100 CPC and its parameters. It is further to be noted that the property claimed by the appellant was already sold on 03.06.2014 in the executing Court.

28. Therefore, in view of the nature of the sale deed dated 29.01.2011 whereupon the appellant is resting his claim in making this objection under Order XXI Rule 58 CPC, against the first respondent in execution of the



decree, the inference to draw is that it cannot stand. The executing Court rightly came to such conclusion. Dismissal of the claim petition of the appellant by the Executing Court is proper.

29. Learned appellate Judge also considered want of material and evidence in the shape of relinquishment deed or such material relating to proceedings in execution petition, in drawing conclusions supporting the dismissal of this claim petition by the executing Court.

30. If at all the appellant has any claim, his remedy appears to be elsewhere and to proceed against his vendor including against the second respondent. The first respondent or auction purchaser, if any shall stand protected by Section 64(1) CPC, against this claim by the appellant. Therefore, on this sole ground finding that this second appeal as such is not maintainable, since this Court is satisfied in terms of Section 100 CPC that there are no such questions including substantial questions of law to consider, it has to be dismissed.

31. In the result, the second appeal is dismissed confirming the decree and judgment of the lower appellate Court, which in turn has confirmed the decree and order of the executing Court. No costs. Interim orders if any, stand vacated. All pending petitions, stand closed.

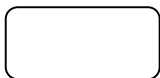
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