courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(2001) 06 AP CK 0002

Andhra Pradesh High Court

Case No: Transfer C.M.P. No. 149 of 2001

Sait Bharat Kumar	APPELLANT
Vs	
Vankayala Ratnamanikyam	RESPONDENT

Date of Decision: June 29, 2001

Citation: (2002) 2 ALD 556 Supp : (2001) 4 ALT 740

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Ch. Dhananjaya, for the Appellant; K. Venkata Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.S.A. Swamy, J.
This application is filed seeking transfer of E.P. No. 122 of 2000 in R.C.C. No. 5 of 1995 on the file of the Junior Civil Judge-cum-Rent Controller, Amalapuram, East Godavari District, to any other Court having jurisdiction to entertain the same.

2. It is alleged that the Executing Court is likely to deliver possession of the property without taking into consideration the petitioner''s interest over the property and the report of the Amin. It is also the case of the petitioner that the Executing Court is passing orders without looking into the record, and that it also ordered Police Aid for execution of the warrant and general order of arrest of those people who cause obstruction in taking delivery of the possession of the property.

3. This Court while giving notice on admission by an order dated 23rd April, 2001 in C.M.P.No. 9081 of 2001 granted interim stay of all further proceedings. Now the respondent filed his counter and the matter is posted for hearing before this Court.

4. This is a very interesting case. The facts of the case demonstrate to what extent an unscrupulous litigant can go taking advantage of the procedural laws and have a last laugh over the administration of justice in this country. It is not in dispute that the father of the petitioner herein was a tenant over the suit schedule property for a long time and when he committed default in payment of rent, the respondent initially filed R.C.C. NO. 8 of 1994 on the file of the Court of Principal Junior Civil Judge, Amalapuram, seeking eviction of the tenant (father of the petitioner) on the ground of wilful default. While that application is pending, he seemed to have further committed default and again the respondent filed R.C.C.No. 5 of 1995 on the file of the same Court. R.C.C.No. 8 of 1994 was allowed by orders dated 07-04-1997 and the appeal filed by the father i.e., C.M.A.No. 19 of 1997 was dismissed on 09-08-1999. R.C.C.No. 5 of 1995 seemed to have been dismissed by the trial Court on 09-03-1998 and on appeal the Senior Civil Judge, Amalapuram allowed C.M.A.No. 9 of 1998 on 10-07-2000. Thereafter, the present E.P.No. 122 of 2000 was filed in R.C.C.No. 5 of 1995 for taking delivery of the suit schedule property and the Executing Court issued warrant for delivery of possession of the suit schedule premises. At that stage, the petitioner, who is no other than the person who has given evidence on behalf of his father in the earlier eviction petitions filed O.S.No. 26 of 1999 on the file of Senior Civil Judge, Amalapuram, for specific performance by alleging that the respondent herein i.e., landlord sold premises bearing No. 7-1-32(2) for a consideration of Rs. 2,25,000/- under an oral agreement of sale on 02-06-1999 and having taken the entire sale consideration gave a receipt for the amount and delivered possession of the suit schedule premises on 12-06-1999 and along with the above suit, he filed I.A.No. 201 of 2000 seeking injunction restraining the respondent herein from evicting him, pursuant to the eviction order in R.C.C.No. 5 of 1995 and the same was dismissed on 25-04-2001. When the Amin tried to execute the warrant, the petitioner raised an objection stating that the possession of the premises sought to be taken in execution of the decree bears Door No. 7-1-32/1 and as such the Amin cannot take possession of the premises bearing No. 7-1-32/2. On that the Amin seemed to have returned the warrants for proper directions from the Court with regard to the identity of the property on 31-03-2001. At this juncture, the respondent seemed to have filed E.A.No. 258 of 2000 for removal of the obstruction while executing the order. In the said application the petitioner gave evidence as first witness on behalf of the tenant (his father). The Court below after considering the case of the petitioner passed order for removal of the obstruction. Again when Amin had been to the place to execute the warrant, the petitioner along with his men prevented him from executing the warrant. In those circumstances, the respondent filed E.A.No. 106 of 2001 for grant of Police Aid and E.A.No. 107 of 2001 to order general arrest of the persons who cause obstruction to the execution of the eviction order and the executing Court passed orders accordingly.

5. Now having exhausted all the avenues open to him, the petitioner came up with this application seeking transfer of the E.P. by casting aspersions on the Judge stating that he may not get fair justice in the Executing Court as according to him, the learned Judge is passing orders contrary to his interests without following due process of law and in

violation of principles of natural justice. He also found fault with the Court for not giving notice to him before passing any ex parte orders.

6. The sheet anchor of the argument of the petitioner is that the property, which has to be delivered under the order and decree of the Rent Controller, is different from the property that is in his possession. In E.A.No. 258 of 2000 filed for removal of the obstruction, the petitioner gave evidence as first witness. In the very first sentence of the chief-examination he categorically stated that "I have purchased the E.P. schedule property from her for Rs. 2,25,000/- and obtained a receipt on 12-06-1999". In the cross-examination again he says that "it is true to suggest that my father is tenant of the petition schedule property from the last 20 to 25 years". With regard to delivery of possession, he states that "I do not have any documentary proof to show that the schedule property was delivered to me. Till then the schedule property was in possession of my father as tenant." With regard to giving of evidence by him in the R.C.C. filed by the respondent he states that "it is not true to suggest that I gave evidence in R.C.C.No. 5 of 1995." When his deposition in R.C.C. was shown and read over to him he simply says that he does not remember whether he gave evidence in R.C.C.No. 5 of 1995 or not. From the evidence it is seen that he is obstructing the Amin from taking delivery of the suit schedule property claiming that he purchased the suit schedule property. The matter can be looked at from another angle. He filed a suit O.S.No. 26 of 1999 for specific performance and in the I.A.No. 201 of 2000 he sought for injunction restraining the respondent from evicting him pursuant to the eviction order passed in R.C.C.No. 5 of 1995. If really the suit schedule premises is different from that of the premises covered by the decree he would not have sought for such a relief. At any rate, when the Court refused to grant injunction, if there were any bona fides on the part of the petitioner, he would have carried the matter in appeal. But he has not done so. Thirdly, when the petitioner obstructed the Amin from the executing the order of the Court, the respondent filed E.A.No. 258 of 2000 seeking removal of the obstruction in execution of the eviction order. In that application he gave deposition and the relevant portion of his deposition was already extracted. When the Court passed an order directing removal of the obstruction, the petitioner did not choose to question the correctness of that order. The matter can be viewed from the human conduct also. Admittedly the petitioner was doing business in the premises that was taken on lease by his father all these years and he has given evidence on behalf of his father. After the entire process of litigation came to an end when the decree holder is taking steps to recover possession of the property, the petitioner comes up with the plea that under an oral agreement he purchased the property from her, which cannot be believed by any prudent person. Further, he stated that the respondent delivered the possession of the property to him on 12-06-1999. It is not known how the respondent can deliver possession of the property without taking delivery of possession of the property from the Judgment-Debtor who is no other than the petitioner in the guise of his father. I have no manner of doubt in holding that the petitioner has not only indulged in perjury, but also gone to the extent of attacking the Judicial Officer by stating that the Officer is passing orders against his interest without

following due process of law and he would not get fair justice. I do not see any merits in this application which is filed only with an intention to drag on the proceedings to the extent possible. It is nothing but vexatious litigation. Accordingly, I do not find any merits in this Transfer Application and it is dismissed with exemplary costs. Advocate fee is Rs. 5,000/-.

7. This is a fit case where this Court can initiate proceedings for perjury and vexatious litigation. Because of the persuasion of the Counsel for the petitioner, I am letting him of by a stern warning that if he comes to the adverse notice of the Court again he will be suitably punished.

8. Before parting with the case, it came to light that the suit for specific performance was filed by a senior Advocate of Amalapuram Bar and if the members of the legal fraternity who claim that theirs is a noble profession, degenerate to such an extent of defeating the claims of a decree holder by getting into existence fabricated documents, the prestige and the respect of the institution will be in peril and in fact the litigant public in the country already started criticising that the Courts are meant for Lawyers, but not for the litigant public. If this practice continues, the downfall of the institution is very near. I hope and trust my observations will send the required message to the members of the legal fraternity to save the institution from further degeneration.