
(2004) 04 AP CK 0014

Andhra Pradesh High Court

Case No: CRP No. 3992 of 2002

Vanama Veera Bhadraiah

APPELLANT

Vs

G. Venkataratnam and Another

RESPONDENT

Date of Decision: April 21, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 144

Citation: (2004) 3 ALD 840 : (2004) 4 ALT 274 : (2004) 2 APLJ 312

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: P. Prabhakar Rao, for the Appellant; T.P. Satyanarayana Chary, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

This CRP is filed against the order dated 18-6-2002 in LA. No. 122 of 2000 in O.S. No. 667 of 1988 on the file of the Senior Civil Judge, Miryalaguda. The order under revision came to be passed under peculiar circumstances.

2. The petitioner filed O.S. No. 809 of 1989 in the Court of the Junior Civil Judge, Miryalaguda against the 2nd respondent for recovery of a sum of Rs. 13,760/-. The suit was decreed on 4-10-1990. Since the decree was not complied with, the petitioner filed E.P. No. 13 of 1991 against the 2nd respondent.

3. The 1st respondent filed O.S. No. 667 of 1988 in the Court of the Senior Civil Judge, Miryalaguda against the 2nd respondent for the relief of specific performance of an agreement of sale. A sum of Rs. 8,000/- remained unpaid towards balance of consideration. The 1st respondent volunteered to deposit that amount into the Court, obviously to establish his plea that he was ready and willing

to perform his part of contract. The suit was initially decreed ex parte. The 1st respondent also filed E.P. against the 2nd respondent. At the instance of the latter, the ex parte decree was set aside and the suit was restored to file.

4. When O.S. No. 667 of 1988 was pending, after being restored, the petitioner came to know that an amount of Rs. 8,000/- payable to the 2nd respondent was lying to the credit of that suit. Therefore, he filed application in the E.P.13 of 1991 to send for the said amount. The application was ordered and the amount of Rs. 8,000/- deposited by the 1st respondent was sent to the Court of the Junior Civil Judge, Miryalaguda for compliance with the decree in E.P. No. 13 of 1991. On the amount being sent, it was paid to the petitioner, towards the part satisfaction of the decree.

5. Later on, O.S. No. 667 of 1988 itself was dismissed for default. Thereafter, the 1st respondent, plaintiff therein, filed I.A. No. 122 of 2000 u/s 144 read with Section 151 of the CPC for recovery of the sum of Rs. 8,000/- from the petitioner. The I.A. was allowed by the Trial Court.

6. Learned Counsel for the petitioner submits that the application u/s 144 of C.P.C. was not maintainable, once the suit itself was dismissed for default. It is also his case that, if at all the 1st respondent, the plaintiff in O.S. No. 667 of 1988 was not serious about pursuing his remedy against the 2nd respondent, it was open to him to take steps for recovery of the amount of Rs. 8,000/- also. He contends that the petitioner is not a party to that suit and the question of order being passed against him u/s 144 C.P.C. does not arise.

7. Learned Counsel for the 1st respondent submits that his client deposited the amount of Rs. 8,000/- voluntarily and the 2nd respondent, the sole defendant in that suit did not have any claim over that amount. He contends that the said amount was sent for and paid to the petitioner without knowledge of his client. Placing reliance upon a judgment of this Court in [Maddula Kasiyya Vs. Jallipalli Pullayya and Others](#), , the learned Counsel submits that the amount deposited in such circumstances cannot be the subject-matter of attachment in a decree passed in another suit. Though the 2nd respondent is also served through publication of notice in news paper, under the orders of this Court, he has not chosen to respond.

8. The 2nd respondent figured as the sole defendant in O.S. No. 809 of 1989 filed by the petitioner in the Court of the Junior Civil Judge, Miryalaguda for recovery of certain amount, and in O.S. No. 667 of 1988 in the Court of Senior Civil Judge, Miryalaguda filed by the 1st respondent for specific performance of agreement of sale. The suit filed by the petitioner was decreed on 4-10-1990. The petitioner filed E.P. No. 13 of 1991. The 1st respondent deposited a sum of Rs. 8,000/- to the credit of the suit in the suit filed by him towards balance of consideration. The petitioner came to know about such deposit and filed application for transferring the said amount. The application was ordered. The amount was treated as the one, for which the 2nd respondent, common defendant in both the suits, is entitled to. The

petitioner certified part satisfaction of the decree, on being paid the said amount of Rs. 8,000/-.

9. O.S. No. 667 of 1988 was initially decreed ex parte and was later on restored to file. However, it was ultimately dismissed for default. The 1st respondent appears to have decided not to proceed with the suit. He filed application u/s 144 C.P.C. for refund of Rs. 8,000/-. The objection raised by the learned Counsel for the petitioner as regards maintainability of such application cannot be brushed aside. Section 144 has a limited application. It enables the parties who suffer detriment, as a result of an order or decree, to be restored to the original position, in the event of such order or decree being reversed or modified. Dismissal of a suit for default cannot bring about a situation enabling the parties to file application u/s 144. The rare instance when this provision can be invoked in the cases of dismissal for default is where costs are recovered by the defendant consequent on dismissal of suit for default and it is restored later. However, 1st respondent has invoked the inherent powers of the Court u/s 151 C.P.C. also. Therefore, though Section 144 C.P.C. is not applicable to the facts of the case, the application can be sustained as the one u/s 151 C.P.C.

10. It is true that in Maddula Kasiyya case (supra), this Court took the view that where an amount is deposited by the plaintiff in a suit for specific performance of agreement of sale, towards balance sale consideration, the defendant therein cannot be said to be holding any disposing power, vis-a-vis such amount. It was also held that such amount is not available to be attached in any proceedings against defendants in such suits. In the present case also, the 2nd respondent cannot be said to have had any disposing power vis-avis the amount of Rs. 8,000/- deposited by the 1st respondent. Things would have been totally different, had it been a case that the amount still remained with the Court and the petitioner's claim for payment of that amount was pending. The amount was paid to the petitioner long back, in part satisfaction of the decree against the 2nd respondent. Now the question is only about refunding of the amount Rs. 8,000/- to the 1st respondent.

11. There does not exist any privity of contract between the petitioner and the 1st respondent. Both of them do not figure as parties in any proceedings. They were plaintiffs in separate suits to which the 2nd respondent was the common defendant. The petitioner was paid amount of Rs. 8,000/- as a measure of recovery against the 2nd respondent. The 2nd respondent is very much present before the Court below. He did not dispute his liability towards the petitioner. For all practical purposes, the amount of Rs. 8,000/- was paid to the 2nd respondent, in turn to be transmitted to the petitioner. The primary responsibility to refund the amount, is therefore, basically with the 2nd respondent. He is the only defendant in O.S. No. 667 of 1988, and the amount of Rs. 8,000/- deposited by the 1st respondent was capable of being recovered from him. It was not necessary for the Trial Court to have passed an order against the petitioner herein, that too exclusively.

12. Under the circumstances, the C.R.P. is allowed and the order under revision is modified to the extent that the 2nd respondent shall refund the amount of Rs. 8,000/- to the 1st respondent together with interest at 9% from the date on which it was paid to the petitioner. This order shall be treated as decree for the said amount against the 2nd respondent.