

(2008) 09 AP CK 0116

Andhra Pradesh High Court

Case No: C.R.P. No. 3480 of 2008

Meda Hari Krishna

APPELLANT

Vs

Akula Seshamma (died) per L.Rs.
and Others

RESPONDENT

Date of Decision: Sept. 23, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 26, Order 21 Rule 58, Order 21 Rule 99, Order 9 Rule 13

Citation: (2009) 1 ALD 846 : (2008) 6 ALT 684

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: V.R. Reddy Kovvuri, for the Appellant; None Appeared, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The petitioner filed an application, under Rule 26 of Order XXI CPC, in E.P. No. 7 of 2001, on the file of the Court of Senior Civil Judge, Rajampet, with a prayer to stay the execution proceedings. The application was returned, with certain objections on 4.8.2008. Petitioner represented the same on 5.8.2008. The Executing Court once again returned the application, on the same day, i.e. 5.8.2008. The return is challenged in this CRP.

2. The facts that gave rise to the filing of the CRP are as under. Akula Seshamma, the deceased 1st respondent, filed O.S. No. 34 of 1983, against her two sons, by name Akula Krishna Murthy, the deceased 2nd respondent; and respondent No. 3, for declaration of title, on the strength of a will said to have been executed in her favour, by her husband. The dispute was compromised between the parties. The parties filed I.A. No. 786 of 1983, with a prayer to pass the decree, in terms of

compromise. Accordingly, a decree was passed on 26.10.1983. The decree inter alia provided for the exclusive possession and enjoyment of the suit schedule properties by the two sons. The petitioner has purchased certain items of properties, from one of the sons, by name Krishna Murthy, between 1994 and 1997.

Seshamma is said to have filed I.A. No. 269 of 1999, with a prayer to set aside the compromise decree passed on 26.10.1983. Not only the said decree was set aside, but also the suit was decreed as prayed for, on 27.9.1999. During her life time, Seshamma filed the E.P., for recovery of possession of the schedule properties.

3. On coming to know about the decree in O.S. No. 34 of 1983 passed, in respect of the properties purchased by him, the petitioner filed O.S. No. 63 of 2001, in the same court, for the relief of setting aside the decree in O.S. No. 34 of 1983. He filed an application under Rule 26 of Order XXI CPC, with a prayer to stay the execution proceedings, pending disposal of O.S. No. 63 of 2001. The same was returned by the Executing court, by raising several objections.

4. Sri V.R. Reddy Kovvuri, learned Counsel for the petitioner, submits that the objection raised by the Executing Court, as to the maintainability of the application, was met, and again the application was returned, on the same objections. He submits that being the immediately affected party, the petitioner is entitled to file E.A., though he is not a party to the EP.

Basically, the CRP is not maintainable, inasmuch as the petitioner cannot be said to have suffered any detriment, on account of return of the application filed by him. Mere return of application does not lead to adjudication of rights. In a given case, if the explanation offered by the concerned party to the objection raised by the court, is not accepted, even a pronouncement on merits, as regards objections, can be invited.

5. On other grounds also, the application filed by the petitioner is untenable. Admittedly, the petitioner is not a party to the execution proceedings. He has chosen to present the application, under Rule 26 of Order XXI CPC. The provision reads as under:

26. When Court may stay execution: (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such

property or the discharge such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor:- Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court shall require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

6. From a perusal of the rule, it becomes evident that an application under the provision can be filed, only by a judgment debtor in the E.P. The stay of execution proceedings can be prayed for under the said provision, by a judgment debtor, only in two circumstances, viz, when he intends to file an application under Order IX Rule 13 CPC, if the decree is ex parte in nature, or where he intends to approach the appellate court, if the decree is on merits. There is no scope for filing an application under this provision, by a third party, that too, for the purposes other than those, mentioned in the rule. Not being a party to the decree, the petitioner was not entitled to present the application, and the purpose mentioned therein, does not fit into any provision.

7. It is not as if that the petitioner does not have any remedy. Rule 58 of Order XXI CPC, confers the right upon persons, who are not parties to the decrees, to come forward with an application seeking adjudication, in case, they feel aggrieved by such decree. The rule mandates that such application shall be adjudicated, as though it is an independent suit. Even where a third party is dispossessed in the process of execution, he can file an application under Rule 99 of Order XXI C.P.C.

8. Viewed from any angle, the application filed by the petitioner was untenable.

9. Hence, the CRP is dismissed, leaving it open to the petitioner to pursue his remedies, in accordance with law. There shall be no order as to costs.