
(2008) 2 ALD 638 : (2008) 1 ALT 335

Andhra Pradesh High Court

Case No: C.R.P. No. 6144 of 2006

Chella Siva Kumar
Reddy

APPELLANT

Vs

Kudumula Surendra

RESPONDENT

Date of Decision: Nov. 2, 2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 37, Order 21 Rule 38

Citation: (2008) 2 ALD 638 : (2008) 1 ALT 335

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: S.V. Muni Reddy, for the Appellant; A.V.S. Satish Babu, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The petitioner filed O.S. No. 176 of 2001 in the Court of Principal Senior Civil Judge, Nellore, against the

respondent, for recovery of a sum of Rs. 2,03,853/-. The suit was decreed. After the decree became final, the petitioner filed E.P. No. 158 of

2004, under Rues 37 and 38 of Order 21 C.P.C., with a prayer to issue warrant of arrest against the respondent. He pleaded that the respondent

is possessed of adequate movable and immovable properties and despite the same, he did not honour the commitment under the decree. The E.P.

was opposed by the respondent and he urged that he is not possessed of any property. Through its order, dated 03.07.2006, the trial Court

dismissed the E.P. Hence, this Civil Revision Petition.

2. Sri S.V. Muni Reddy, the learned Counsel for the petitioner submits that his client placed sufficient and reliable material before the Executing

Court to prove that the respondent is possessed of adequate means, and still, the E.P. was dismissed. He contends that the Executing Court

disbelieved even the registered documents and admitted signatures of the respondent and virtually reduced the decree in the suit to a waste paper.

3. Sri A.V.S. Satish Babu, the learned Counsel for the respondent, on the other hand, submits that the petitioner failed to prove the allegation that

the respondent had adequate means to pay the decretal amount and that no exception can be taken to the order under revision. He contends that

vague and abstract allegations made by the petitioner cannot constitute the basis to send the respondent to civil prison.

4. The decree obtained by the petitioner against the respondent became final. Alleging that the respondent is possessed of adequate means and

still, did not pay the decretal amount, the petitioner instituted the proceedings under Rules 37 and 38 of Order 21 C.P.C. On his part, the

respondent simply pleaded that he has no means or capacity to pay the amount under the E.P.

5. The petitioner deposed as P.W. 1 and another witness was examined as P.W. 2. He has also filed a certified copy of sale deed, dated

29.12.2005, marked as Ex.A-1. It was alleged that the respondent is a signatory to the sale deed along with his father and brother. The

respondent, on the other hand, deposed as R.W.1 and did not lead any documentary evidence.

6. C.P.C. prescribes a detailed procedure to be followed in the applications filed for detention of judgment debtors in civil prison. Since personal

liberty is involved, the burden is placed upon the decree holder to satisfy the Court that the judgment debtor had adequate means, but still did not

honour the decree. The recording of evidence is required to take place in the presence of the decree holder (sic. judgment-debtor).

7. The purport of the evidence, that is required to be adduced by the judgment-debtor (sic. decree holder), in a matter of this nature, has its own

limitations. He is not supposed to be aware of the properties that are possessed by the decree holder (sic. judgment-debtor). In spite of best

efforts, he may not be able to know the entire properties, possessed by his opponent. It is only on the basis of the information, which he gets about

it, that he must be able to satisfy the Court. The standard of proof, in the matters of this nature, cannot be equated to the one in the disputes

relating to proof of title, possession etc. A decree holder would not be claiming any right, as such, in the properties that are referred to in his

evidence.

8. The petitioner as P.W. 1 furnished a list of as many as 5 or 6 items of properties held by the respondent, together with his father and brother, as

well as the value thereof. One important piece of evidence is Ex.A-1. Under this document, the respondent, his father and his brother sold away an

extent of Ac. 1.00 of land to a third party. Once the respondent figured as a transferor, the inescapable conclusion is that the family was joint and it

is possessed of various items of property. Otherwise, there was no occasion or basis for him to join as a vendor. The other items of property

furnished by the petitioner stand on the same footing. However, the executing Court made an observation to the following effect:

Ex.A-1 discloses that the J. Dr and his father and brother sold away their ancestral property of Ac. 1.00 of land to Guduru Sreenathareddy. But

Ex.A-1 does not show any other land of their joint family.

9. From the statement of fact contained in the first sentence, the conclusion arrived in the second sentence does not follow. A sale deed in respect

of one item cannot be expected to disclose the other items possessed by the transferors therein.

10. Had it been a case, where the respondent pleaded that he is a co-parcener and that his share is not sufficient to meet the liability under the

decree, things would have been different altogether. He flatly denied of possessing any item of property in any manner. Ex.A-1 and the evidence of

P.Ws. 1 and 2 belied the same. Therefore, the inescapable conclusion was that the respondent had sufficient means, but failed to honour the

decree. Therefore, the E.P. ought to have been allowed, as prayed for.

This Court expressed the view to allow the E.P. At that stage, the learned Counsel for the respondent made a request for extending the facility of

instalments to the respondent. This was opposed by the learned Counsel for the petitioner.

11. For the foregoing reasons, the Civil Revision Petition is allowed and the order under revision is set aside. Consequently, the E.P. shall stand

allowed, as prayed for. However, in case, the respondent clears the decretal amount, in six quarterly instalments, the first of which shall be paid by

30.11.2007, the execution of the order shall be deferred. In case, the respondent commits default for two consecutive instalments, the executing

Court shall give effect to the order of detention in civil prison. There shall be no order as to costs.