

IN THE HIGH COURT OF JUDICATURE OF ANDHRA
PRADESH AT HYDERABAD

Dated this the 19th day of April, 2011

Present:
The Hon'ble Sri Justice N. Ravi Shankar

C.R.P.No. 4069 of 1996

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Between:
Tailor Imam Saheb

...Petitioner

And

Garla Ananda Murthy and others

..Respondents

THE HON'BLE SRI JUSTICE N. RAVI SHANKAR

C.R.P.No. 4069 of 1996

Order:

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The petitioner in this civil revision petition, is the plaintiff and decree holder in O.E.P.No. 9 of 1994 in O.S.No. 271 of 1981 on the file of the I Additional District Munsif Court, Madanapalle (executing Court). He filed this revision questioning the order 16.8.1986 by which the executing court ordered that the EP be closed with a direction to the DHR to take back the non-judicial stamps filed by him for the reasons recorded in the said order.

2. This civil revision petition is of the year 1996. It is brought to my notice that earlier it was dismissed for default for non-compliance of a conditional order regarding deposit of process and subsequently it was restored. Again on 3.3.2011 petitioner's counsel was permitted to take out notice to the respondents by registered post with acknowledgement due or by courier and four weeks time was granted. Thereafter, the civil revision petition was posted to 1.4.2011, but there was no presentation for the petitioner. The matter is of the year 1996. It may be noted that even under section 115 of the Code of Civil Procedure or even under Article 227 of the Constitution of India a revision has to be disposed of on merits by examining the legality of the order in question, even though the petitioner and his counsel fail to appear. Hence this revision is taken up on merits for disposal.

3. The impugned order of the executing court shows the decree holder filed the said EP under order 21 Rule 34 of the CPC to direct the JDRs to execute the sale deed in terms of the decree in the suit presumably as the JDRs have failed to comply with the decree. The details of the suit and the decree passed therein are not clear from the impugned order or in the grounds of revision.

However, the mention of order 21 rule 34 CPC in the impugned order would suggest that the decree in the suit was granted for execution of a document and that it appears that the suit was a specific performance suit. The impugned order would also show that the DHR has deposited the necessary non-judicial stamp papers for obtaining the document.

4. Now, a perusal of the impugned order would show that the executing court closed the EP on two grounds. The first is that JDR No.1 died and the DHR has not taken steps to bring on record his LRs to seek the relief against them also. The second is that an appeal i.e., AS.No.65 of 1991 against the Decree in question was pending on the file of the Additional District Judge, Madanapalle. So far as the second ground mentioned by the executing court, it is stated in the grounds of revision that there was no stay of the execution of the decree was granted and therefore the executing court was not correct in closing the EP on that ground. Even the impugned order shows that there was no stay of the execution of the decree and therefore it can be said that the executing court was not correct in closing the EP on that ground.

5. It may however be noted that the first ground given by the executing court is that JDR No.1 died and no relief is claimed against his legal representatives and therefore execution cannot be ordered against JDr.No.1/his legal representatives. It may be noted that the executing court has recorded that the 2nd JDR remained ex parte, but it proceeded to close the EP on the ground that since the first JDR died and his legal representatives were not brought on record, the execution cannot be granted.

6. A reading of the grounds of revision would show that nothing is mentioned in them as to how the said first reason recorded by the executing court to close the EP is not correct. What all that is stated with regard to the death of the first JDR is

that the DHR should have been given an opportunity to take LR steps. Nothing is mentioned in the grounds of revision that DHR applied for taking LR steps, in respect of the deceased first JDR and that the DHR was refused opportunity in that behalf. Hence the DHR complaint in that behalf, in this revision cannot be accepted.

7. Above all, it should be noted that the impugned order is dated:16.8.1996. We are now in April, 2011. In other words, as on today more than fourteen years have elapsed from the date of the impugned order. The revision petitioner or his counsel did not furnish any information as to what transpired in these fourteen years and whether the appeal –AS.No.65 of 1991 has been disposed of and if so, what is its result. In these circumstances, and for the aforesaid reasons, I am of the opinion that this CRP need not be kept pending. Accordingly, it is held that the order under revision does not call for any interference and the DHR can work out his remedies available to him under Law.

8. Hence the civil revision petition is dismissed. No costs.

N. RAVI SHANKAR, J.

19—04-2011.

***BVS**