

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT
HYDERABAD
(Special Original Jurisdiction)

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FRIDAY, THE THIRTIETH DAY OF DECEMBER,
TWO THOUSAND AND ELEVEN

-
PRESENT:
THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

-
SECOND APPEAL No.1043 of 2011

-
Between:

b. Venkateswara Rao

... Petitioner

And

Smt. Daggula Padmavathi and another.

... Respondents

Counsel for the petitioner: Sri Nutalapati Krishna Murthy

Counsel for the respondents: None

This Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

SECOND APPEAL No.1043 of 2011

ORDER:

This second appeal arises out of judgment and decree, dated 14.06.2011, in A.S.No.114 of 2009 on the file of the learned III Additional District Judge, (FTC), Khammam, whereby she has confirmed the judgment and decree, dated 24.08.2009, in E.A.No.298 of 2009 in E.P.No.292 of 2009 in O.S.No.512 of 2007 on the file of the learned Principal Junior Civil Judge, Khammam.

The appellant is a third party to the suit filed by respondent No.1 against respondent No.2 for recovery of certain amounts. The suit filed by respondent No.1 was decreed against respondent No.2. The said decree has become final and for execution of the said decree, respondent No.1 filed E.P.No.292 of 2009 for attachment and sale of the movables available in house No.3-1-65/2 of Indiranagar Colony, Khammam. The appellant, who is the son of respondent No.2 – judgment debtor, filed E.A.No.298 of 2009 claiming that the movables, which were attached, belong to him and that the judgment debtor has no occasion whatsoever in respect thereof. Both the Courts below have concurrently found that the appellant and his sister colluded with respondent No.2, judgment debtor, and have brought Exs.A2 to A4 and A7 into existence with a view to defeat the claim of respondent No.1. A perusal of both these judgments would show that several circumstances have been relied upon to arrive at the conclusion relating to collusion.

It is not in dispute that respondent No.2 was the original owner of the property and during the pendency of the suit filed by respondent

No.1, he has executed Ex.A7 – gift deed purporting to transfer the property in favour of his daughter. The findings rendered by both the Courts below fall in the realm of appreciation of evidence. In my opinion, this Court exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908 will not re-appreciate the evidence. As both the Courts below have not committed any error of law, no substantial question of law arises for consideration in the second appeal. Accordingly, the second appeal is dismissed. The sum of Rs.20,000/- stated to have been deposited by the appellant in pursuance of the interim direction granted by this Court shall be returned to him on sale of the movable properties.

As a sequel, SAMP.No.2389 of 2011 is also dismissed.

C.V.NAGARJUNA REDDY, J

Date: 30.12.2011
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