

K. Anitha Vs. G. Subbaiah

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Court : Andhra Pradesh

Decided On : Jul-24-2009

Reported in : 2009(6)ALT421

Judge : L. Narasimha Reddy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195, 195(1), 195(4) and 340; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 9, Rule 13; Indian Penal Code (IPC) - Sections 172 to 188

Appeal No. : C.R.P. No. 5962 of 2008

Appellant : K. Anitha

Respondent : G. Subbaiah

Advocate for Def. : VL.N.G. Murthy, Adv.

Advocate for Pet/Ap. : K. Chidambaram, Adv.

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioner filed O.S. No. 1533 of 1996 in the Court of II Senior Civil Judge, City Civil Court, Hyderabad, against the respondent, for the relief of specific

performance of an agreement of sale. The suit was decreed ex parte, on 03.03.1997. E.P. No. 65 of 1997 was filed and the decree was executed.

2. The respondent filed I.A. No. 577 of 2007 under Order IX Rule 13 CPC with a prayer to set aside the ex parte decree. He has also filed I.A. No. 873 of 2007 under Sections 195 and 340 Cr.P.C read with Section 151 CPC, with a prayer to prosecute the petitioner, her father, by name, K. Rangaiah and the subsequent purchasers by names, A.N.V. Gopal and A.K. Rama Devi. He pleaded that the petitioner and her father have brought into existence, or fabricated, the agreement of sale by misusing certain signed papers and thereby, committed the offence, mentioned in Section 195 Cr.P.C.

3. It appears that I.A. Nos. 873 and 577 of 2007 were being heard together. At the instance of the respondent, the trial Court passed an order, dated 25.11.2008, directing that the preliminary enquiry in I.A. No. 873 of 2007 would be taken up separately. The petitioner feels aggrieved by the said order.

4. Sri K. Chidambaram, learned Counsel for the petitioner, submits that the prosecution, contemplated under Section 195 Cr.P.C. can be ordered only when the Court is satisfied that an offence under the relevant provisions of IPC is committed in the course of proceedings before it. He contends that Section 340 Cr.P.C. makes it amply clear that the prosecution must precede a finding as to the satisfaction of the Court in this regard. Learned Counsel submits that it is only when a full-fledged trial takes place in the suit, that too, after the ex parte decree is set aside, that there would be an occasion for the Court to express its view, be it, as to the allegations of forgery or fabrication of the documents.

5. Sri V.L.N.G.K. Murthy, learned Counsel for the respondent, on the other hand, submits that the endeavor of the trial Court, through the order under revision was only to ensure that the preliminary enquiry under the relevant provisions of Cr.P.C. takes place, so that, a decision can be taken whether or not to initiate prosecution against the petitioner.

6. The ex parte decree in favour of the petitioner was passed in the year 1997. Ten years thereafter, the respondent filed I.A. No. 577 of 2007 under Order IX

Rule 13 CPC. The enquiry into that, is said to be pending. Having regard to the nature of allegations made therein, the trial Court is recording oral evidence also. The enquiry is yet to be completed. The petitioner has also filed I.A. No. 873 of 2007 with a prayer to initiate prosecution against the petitioner, her father and brothers, as per the provisions of Sections 195 and 340 Cr.P.C.

7. Section 195 Cr.P.C. provides for prosecution for contempt of lawful authority including the Court for offences punishable under Sections 172 - 188 IPC. A perusal of Sub-section (1)(b) of Section 195 Cr.P.C. discloses that a complaint in this regard has to be made when the offence is alleged to have been committed in, or in relation to, any proceeding in the Court.

8. A conclusion, referable to Sub-section (1)(b) of Section 195 Cr.P.C. can be arrived at only when a full-fledged trial takes place and one party to the proceedings proves to the satisfaction of the Court that a document has been fabricated or forged by the other party. As a matter of fact, the civil Court must record a finding to that effect. It is only then, that an occasion would arise for initiation of steps under Section 195 Cr.P.C. that too, by following the procedure prescribed under Section 340 Cr.P.C. Section 340 Cr.P.C. itself mandates that the civil Court must record a finding to the effect that an offence, which is mentioned in Sub-section (1)(b) of Section 195 Cr.P.C. has been committed.

9. Section 340 Cr.P.C. reads as under:

Procedure in cases mentioned in Section 195:

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of Justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate, and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195.

(3) A complaint made under this Section shall be signed--

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this Section, 'Court' has the same meaning as in Section 195.

10. In the instant case, no trial worth its name has taken place, obviously, on account of the non-participation of the respondent in it. In case, the application filed under Order IX Rule 13 CPC is allowed, an occasion may arise for the Court to undertake trial. If during the course of trial, the respondent is able to establish that any documents relied upon by the petitioner are forged, then, the feasibility of directing steps under Sections 195 and 340 Cr.P.C. can be examined. In the present circumstances, the order under revision cannot be sustained in law. As a matter of fact, the I.A. No. 873 of 2007 is premature. A relief of that nature can be claimed only if a trial, with the participation of parties takes place, and finding is recorded by the trial Court to the effect that the documents relied upon by the parties are forged.

11. The civil revision petition is allowed, and it is directed that the trial Court shall close I.A. No. 873 of 2007 leaving it open to the respondent to file an application of that nature, in case, the circumstances provided for under Section 195 and 340 of Cr.P.C., as indicated above, come into existence. There shall be no order as to costs.

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