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Shaik MalikA. Vs. Borre Deva Munemma and Another.

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Court : Andhra Pradesh

Decided On : Aug-02-2010

Judge : Sri L. NaraSimha Reddy, J.

Acts : Code Of Criminal Procedure (CRPC) - XXXVIII Rule 5

Appeal No. : S.A.No.134 of 2010

Appellant : Shaik MalikA.

Respondent : Borre Deva Munemma and Another.

Advocate for Def. : Sri V.R.Reddy Kovvuri, Adv.

Advocate for Pet/Ap. : Sri K.Sudharshan Reddy ,Adv.

Judgement :

The 1st respondent filed O.S.No.24 of 2001 in the Court of Senior Civil Judge, Kadapa, against the 2nd respondent and his daughter, the appellant herein, for cancellation of sale, deed dated 01-09-1998, executed by the 2nd respondent, in favour of the appellant, by declaring it as a fraudulent transaction. It was pleaded that the 2nd respondent was indebted to the 1st respondent, and several suits came to be filed for recovery of the amount. She pleaded that, in spite of filing of the suit, the 2nd respondent executed sale deed, dated 01-09-1998 in favour of his daughter, the appellant herein, with a view to keep the property away, from being proceeded against. It was her case that she came to know about the alleged sale, only when it was mentioned by the 2nd respondent in a counter filed in I.A.No.278

of 2000, filed under Order XXXVIII Rule 5 C.P.C., for attachment before judgment, in O.S.No.174 of 2000.

The 2nd respondent and the appellant contested the matter by filing written-statements. The trial Court decreed the suit on 05-09-2005. The appellant filed A.S.No.8 of 2006 in the Family Court-cum- Additional District Judge, Kadapa. The appeal was dismissed on 31-08-2009. Hence this Second Appeal. Sri K. Sudharshan Reddy, learned counsel for the appellant, submits that the suit filed by the 1st respondent was not maintainable, since he has no locus standi to file it, not being a party to the document, and because no consequential relief was prayed for. He contends that the sale deed was executed much prior to the institution of suits, by the 1st respondent against the 2nd respondent, and the transaction was supported by consideration.

Learned counsel further submits that the trial Court made several observations, which are not at all supported by evidence, and there is nothing unnatural about a father selling the property to his daughter. Sri V.R. Reddy Kovvuri, learned counsel for the 1st respondent, on the other hand, submits that the sale deed in question was executed by the 2nd respondent in favour of his daughter, the appellant, only with a view to defraud the 1st respondent. He contends that Section 53 of the Transfer of Property Act (for short 'the T.P.Act') is substantive as well as procedural in nature, and the suit is referable to that provision. He further contends that the provisions of the Specific Relief Act (for short 'the S.R.Act'), particularly Section 34, has no application to the facts of the case. The prayer in the suit filed by the 1st respondent is that the sale deed, dated 01-09-1998, executed by the 2nd respondent in favour of the appellant, be cancelled. It was alleged that the sale deed was executed only with a view to make the property not available for being proceeded against, in the suits that are filed by the 1st respondent.

The 2nd respondent and the appellant i.e. defendants 1 and 2 in the suit, filed separate written-statements. The trial Court framed the following issues for its consideration: 1. "Whether the plaintiff is entitled for the suit claim as prayed for 2. Whether the claim of the plaintiff on the suit pronote is barred by Law of Limitation? 3. Whether there is no cause of action to file this suit?" The 1st

respondent deposed as PW-1 and she filed Exs.A-1 to A-6. Out of them, Ex.A-1 is the copy of the order in I.A.No.278 of 2000 in O.S.No.174 of 2000, and Exs.A-2 and A-5 are copies of decrees in various suits, obtained by her, against the 1st respondent. Ex.A-6 is the document, which is sought to be cancelled. On behalf of the 2nd respondent and the appellant, DWs 1 to 3 were examined, and Exs.B-1 to B-6 were filed. Exs.B-2 to B-6 relate to the transaction with the Andhra Bank. The suit was decreed, and the appeal filed against it was dismissed.

The first contention urged on behalf of the appellant, is referable to Section 34 of the S.R.Act. It was pleaded that the suit became untenable, since there is no relief consequential to the one, of declaration, that Ex.A.6 is void. The plea is based upon proviso to Section 37 of the S.R.Act. Had the suit been filed for the declaratory relief, the objection raised by the appellant would certainly have carried water. However, the prayer in the suit is for cancellation of the sale deed, dated 01.09.1998 i.e. Ex.A.6, on the ground that it was executed to defeat the rights of the 1st respondent. This squarely fits into Section 31 of the S.R.Act. The provision does not insist that apart from the relief of cancellation, any other consequential or subsidiary relief must be claimed. No provision similar to proviso to Section 34 of the S.R. Act is contained in Section 31. Therefore, the contention of the appellant cannot be accepted.

The second contention is that Ex.A.6 came to be executed much before the filing of the suit and it cannot be said that the document was brought into existence to defeat the claim of the 1st respondent. It needs to be observed that the relief under Section 31 of the S.R. Act can be claimed only after a document was executed. In case, the necessary ingredients of that Section are proved, the Court can grant the relief of cancellation of the document. Further, it is not necessary that the plaintiff in such a suit must have any vested right vis--vis the property covered by the document. It would be sufficient, if he pleads and proves that the document would cause him serious injury, if left intact. The injury, or the right, as the case may be, pleaded by the 1st respondent, is referable to Section 53 of the T.P. Act.

Section 53 of the T.P. Act is predominantly, substantive provision and the right conferred upon an individual under it, can be enforced by taking a recourse to Section 31 of the S.R.Act. Even if these provisions are not specifically mentioned, or cited, in a suit a Civil Court can grant the relief, if the plea is referable to the said provisions and the facts so pleaded are proved to the satisfaction of the Court. Notwithstanding the interrelation between the two provisions, referred to above, there is a fundamental and qualitative difference as to the relief that can be granted when the cases fit exclusively into the respective provisions. If the relief can be granted only under Section 31 of the S.R.Act, it would entail in declaration to the effect that the document concerned is void or voidable. On the other hand, if the case squarely falls into Section 53 of the T.P. Act, the declaration would be to the effect that the transfer in question shall not defeat the claim of the plaintiff therein. In other words, if the interests of the plaintiff are protected or taken care of by the defendant, the transaction would remain in tact.

In the instant case, it is not in dispute that the appellant is indebted to the 1st respondent and the latter had instituted proceedings for recovery of the same. The appellant executed the sale deed in favour of his daughter, the 2nd respondent, at a time when the proceedings for recovery of the amount are in progress. Whatever may have been his intention in selling the property to his daughter, the sale cannot defeat the interests of the 1st respondent. Therefore, no exception can be taken to the decree passed by the trial Court and the judgment rendered by the lower Appellate Court affirming the decree. However, the relief needs to be modified to the effect that, in case the appellant or the 2nd respondent clears the amount due to the 1st respondent, Ex.A.6 shall remain unaffected.

The Second Appeal is accordingly dismissed, granting two months time to the appellant and the 2nd respondent to clear the debt towards the 1st respondent. There shall be no order as to costs.

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