

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Miscellaneous Second Appeal No.4 of 2015

—
Dated 09.04.2015
—

Between:

Thotli Nagi Reddy

...Appellant

and

J.Venkatasiva Reddy and 5 others

...Respondents

Counsel for the Appellant: Mr.L.J.Veera Reddy

Counsel for the Respondents: ---

The Court made the following:

Judgment:

This Civil Miscellaneous Second Appeal (CMSA) arises out of the judgment and decree, dated 15-07-2014, in AS.No.65 of 2013, on the file of the Court of the learned I Additional District

Judge, Anantapuram, by which the judgment and decree, dated 01-06-2010, in IP.No.10 of 2007, on the file of the Court of the learned Senior Civil Judge, Kadiri, has been confirmed.

I have heard Mr.L.J.Veera Reddy, learned Counsel for the appellant, and perused the record.

The appellant has filed IP.No.10 of 2007 in the Court of the learned Senior Civil Judge, Kadiri, under Section 10 of the Provincial Insolvency Act, 1920, to adjudicate him as an insolvent. It is his pleaded case that he is a resident of Maddimadugu; that he has been living by doing agriculture and carrying on trade in groundnuts; that he has got ancestral property of Ac.1-30 cents of dry land; that his family consists of himself, his wife, two daughters and one son; that he could not realize the crops on account of paucity of rains; that for carrying on the trade in groundnuts, he has incurred the debts as shown in the petition A-schedule; that those debts are far in excess of the value of the assets as shown in the petition B-schedule; that respondent No.1, who is the decree holder in OS.No.95 of 2003, filed EP.No.134 of 2003 in the Court of the learned Principal Junior Civil Judge, Kadiri, for his arrest; that respondent No.2, who obtained a money decree in OS.No.172 of 2006, also filed EP.No.126 of 2007 in the Court of the Principal Junior Civil Judge, Kadiri, for his arrest; and that the other respondents have also threatened him to file suits and proceed against him. The appellant has, therefore, sought the relief of adjudication that he has become insolvent.

Respondent Nos.3 to 6 were set *ex parte*.

Respondent Nos.1 and 2 have filed separate counter-affidavits wherein they have specifically denied the claim of the appellant that he has become insolvent.

In his counter-affidavit, respondent No.1 has stated that, after obtaining the decree for recovery of money, he has filed

EP.No.134 of 2003 seeking arrest of the appellant; that after being satisfied on the means of the appellant, the Court has ordered his arrest; and that the appellant owns properties in Survey Nos.29-1, 75, 30, 133, 15, 31 and 32 of Maddimadugu Village. He has further averred that the appellant is doing business in groundnuts, pulses and paddy and getting an income of Rs.5 lakhs per annum; that he is also earning Rs.4 lakhs by raising commercial crops in his agricultural lands; that the appellant has not disclosed all his assets to the Court; and that he has immovable properties worth more than Rs.20 lakhs.

In his counter-affidavit, respondent No.2 has averred that after obtaining money decree in OS.No.172 of 2006, he has filed EP.No.126 of 2007 seeking arrest of the appellant. He has alleged that respondent Nos.1 and 3 to 6 are not real creditors; that they are fictitious persons; and that the decree in OS.No.95 of 2003 pleaded by the appellant is a collusive one between respondent No.1 and the appellant.

On the basis of the rival pleadings, the trial Court has framed the following point for consideration:

“Whether the petitioner satisfied the ingredients of u/s.10 of Provincial Insolvency Act to be adjudicated as an insolvent ?”

On behalf of the appellant, he has examined himself as PW.1 and marked Exs.A.1 and A.2. On behalf of the respondents, RWs.1 to 3 were examined and Exs.B1 and B2 were marked.

On appreciation of both oral and documentary evidence, the trial Court has dismissed the IP by holding that the appellant has not become insolvent and that he is a solvent. This Judgment was confirmed in appeal by the lower appellate Court.

A perusal of the record shows that in his evidence as PW.1, the appellant has claimed that his family owns only Ac.1-30 cents of dry land, in various survey numbers, which is worth Rs.2,40,000/-. However, RW.1 has got marked Ex.B.1- certified copy of No.3 account, which reveals that Acs.3-00 of agricultural land in Survey No.75 stands in the name of the appellant and that groundnut and greengram crops were raised therein. RW.1 has also got marked Ex.B.2- Certified copy of the order in EP.No.134 of 2003 in OS.No.95 of 2003, wherein the learned Principal Junior Civil Judge, Kadiri, having held that the appellant possessed sufficient means to pay the EP amount, ordered his arrest.

Besides having agricultural land, the appellant himself has admitted that he is doing business in groundnuts. Though respondent Nos.1 and 2 could not prove that the appellant was earning Rs.5 lakhs per annum, having admitted that he is doing business in groundnuts, the appellant failed to produce any evidence to prove his income through the said business. Therefore, both the Courts below have rightly presumed that in addition to Ac.1-30 cents of land in the Petition B- schedule, the appellant possesses atleast 3 acres of land in Survey No.75, besides getting sufficient income through trade in groundnuts. Both the Courts below have, on appreciation of the evidence on record, concurrently found that the appellant's income exceeds his debts and therefore, he cannot be declared as an insolvent. Thus, no substantial question of law arises for consideration in this Civil Miscellaneous Second Appeal warranting interference of this Court with the concurrent findings of fact recorded by the Courts below.

For the above-mentioned reasons, this Civil Miscellaneous Second Appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

Dt: 9th April, 2015

LUR