

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2970 of 2014

ORDER :

This Civil Revision Petition is filed challenging the order dt.21.07.2014 in EP.No.36 of 2011 in O.S.No.222 of 2008 of the Senior Civil Judge, Srikalahasti.

2. The petitioner herein is the Decree Holder. Since he obtained the decree in the said suit against the respondent for recovery of money on the basis of a promissory note on 28.07.2009, he sought to sell the properties mentioned in EP schedule for recover of EP amount of Rs.7,43,525/-. In the EP, he has specifically mentioned that these properties had already been attached pending suit in I.A.No.522 of 2008.

3. The respondent/J.Dr filed counter in the said EP stating that EP schedule properties do not belong to him.

4. Before the executing Court in the EP, the petitioner/D.Hr himself examined as PW1 and marked Ex.P1 to P4. The respondent/J.Dr examined himself as RW1 and marked Exs.R1 to R3.

5. By order dt.21.07.2014, the Court below partly allowed the EP and permitted the petitioner to sell only item No.2 of the EP schedule properties in public auction in order to realize the EP amount due from the respondent. It raised attachment against item No.1 of the EP schedule properties. It held that Ex.R3 gift settlement deed indicates that the father of the respondent was having only properties shown in serial No.3 to 5 of item No.1 of EP schedule and he had already gifted away the properties shown in serial No.1 and 2 of Item No.1 of EP schedule to his brother in 1997 itself. It held that as per EX.P4 true copy of 1-B namuna, only an extent of Ac.1.21 cents is in the name of respondent as pattadar and none of the properties shown in item No.1 of EP schedule finds place therein.

6. Challenging the same, this Revision is filed.

7. Counsel for the petitioner contended that the EP schedule properties had been attached pending suit; that the attachment became absolute after the suit had been decreed; and that no third party had filed objection or claim petition with regard to the right of the petitioner to execute the decree against the said properties and therefore the Court below was not right in saying that only item No.2 of the EP schedule properties can be sold in public auction and not item No.1 thereof.

8. Although notice of this Revision had been served on the respondent, there is no representation on his behalf.

9. There is no dispute that EP schedule properties had been attached pending suit and on the suit being decreed, the attachment became absolute. No third party had filed any petition to raise attachment or filed application under Order XXI Rule 97 CPC disputing the right of the petitioner to execute the money decree granted in his favour by selling the E.P. schedule properties. In the absence of any such challenge to the right of the petitioner to execute the decree by sale of the EP schedule properties by any third party, it is not open to the Court below to conduct an enquiry of the nature referred to in the impugned order and permit only item No.2 of the EP schedule to be sold.

10. Therefore, this Civil Revision Petition is allowed. The impugned order dt.21.07.2014 in EP.No.36 of 2011 in O.S.No.222 of 2008 of the Senior Civil Judge, Srikalahasti is set aside and the said EP is allowed in toto. It is directed that both items 1 and 2 of the EP schedule are liable to be sold in satisfaction of the decree obtained by the petitioner in O.S.222 of 2008. There shall be no order as to costs.

11. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

30th October, 2015.

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