

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION NO.1415 OF 2015

Between:

Gowthu Raghu Nayakulu

... Petitioner

and

Vankayala Ravi Gupta and another

... Respondents

SUBMITTED FOR APPROVAL:

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DATE OF JUDGMENT PRONOUNCEMENT : 11th AUGUST,
2015

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1415 OF 2015

ORDER

The decree holder in O.S.No.15 of 2003 on the file of the learned Additional Senior Civil Judge, Eluru, filed E.P.No.121 of 2013 under Order 21 Rules 64 to 66 CPC seeking to bring the EP schedule property to sale by way of a public auction for realizing his decretal dues. By order dated 16.12.2014, the executing Court dismissed the EP. Aggrieved thereby, he is before this Court by way of this civil revision petition filed under Section 115 CPC.

The petitioner obtained judgment and decree dated 19.08.2003 in the subject suit, O.S.No.15 of 2003 on the file of the learned Additional Senior Civil Judge, Eluru, filed for recovery of a sum of Rs.1,13,400/- along with interest at 12% per annum from the date of the suit till the date of the decree and at 6% per annum till realization. He was awarded costs of Rs.6,058/-. He filed the execution petition alleging that the judgment debtors, the respondents herein, failed to pay the decretal amount despite having the capacity to do so being possessed of immovable property. He therefore asked for the said property to be put to sale by way of an open auction so as to realize his dues.

The first respondent-first judgment debtor filed a counter contesting the execution petition, wherein he stated that the EP schedule property no longer belonged to him as he had sold the same to one Bonda Sesha Naga Venkata Ramakumar under registered sale

deed dated 21.12.2010 for discharging his debts. He therefore contended that the petitioner-decree holder was not entitled to bring the said property to sale.

This contention weighed with the executing Court as is evident from the order under revision. The executing Court was of the opinion that as the EP schedule property was sold to a third party, the execution petition was not maintainable as the said property was not liable to be brought to sale. Holding so, the executing Court dismissed the execution petition with costs.

Though the petitioner-decree holder did not state so before the executing Court, it is a matter of record that the EP schedule property was subjected to conditional attachment before judgment by order dated 10.01.2003 passed in the suit. The order reads thus:

‘Heard. The petitioner is the plaintiff filed the suit for recovery of the money basing on the promissory note said to have been executed by the respondent/defendant. In the light of the submissions made by the petitioner’s counsel, I am satisfied to appreciate the contention of the petitioner unless the property is attached before judgment, it is very difficult for the petitioner/plaintiff to realize the amount from the respondent/defendant in the event of the decree passed in his favour. Having regard to these circumstances, I feel it is a fit case to order conditional attachment before judgment.

Hence, issue conditional attachment by giving three days time for furnishing security and urgent notice to the respondent by 10-2-2003.

Typed to my dictation.’

It appears that there was no subsequent order by the trial Court lifting the order of conditional attachment and the suit was ultimately decreed on 19.08.2003. The judgment and decree passed in the suit admittedly attained finality.

Sri P.Rajasekhar, learned counsel for the petitioner-decree holder, contended that the executing Court was bound to take note of the attachment effected before judgment of the EP schedule property during the course of the suit proceedings and Order 38 Rule 11 CPC, which

provides that once a property is under attachment by virtue of the provisions of Order 38 CPC and a decree is passed subsequently in favour of the plaintiff, it would not be necessary to apply for re-attachment of the said property for execution of the decree. He also relied on the provisions of Order 38 Rule 11-A CPC which states to the effect that the provisions of the Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of Order 38 Rule 11 CPC. Learned counsel placed reliance on case law in support of his contention.

In **NANCY JOHN LYNDON V/s. PRABHATI LAL CHOWDHURY**^[1], the Supreme Court held that the sale of an attached property made before the dismissal of an execution petition would be void as the attachment would be subsisting as on the date of such sale.

In **P.RAMACHANDRA REDDY V/s. M.RAGHUNATHA REDDY**^[2], a learned Judge of this Court extensively considered the scope of Order 38 Rules 11 and 11-A CPC.

Significantly, these aspects of the matter were never taken into account by the executing Court as it proceeded in complete ignorance of the attachment effected of the EP schedule property before judgment was rendered in the suit.

In that view of the matter, the order under revision is unsustainable as the executing Court necessarily has to take into consideration the effect of such attachment upon the subsequent sale of the EP schedule property.

The Civil Revision Petition is therefore allowed setting aside the order passed by the executing Court. The matter is remitted to the file of the learned Additional Senior Civil Judge, Eluru, for consideration afresh on the facts and issues of law discussed *supra*. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

11th AUGUST, 2015
PGS

[\[1\]](#) AIR 1987 SUPREME COURT 2061
[\[2\]](#) 1988 (1) ALT 780