

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

CIVIL REVISION PETITION No.2115 of 2015

ORDER:

This Revision is filed challenging the order dt.09-04-2015 in E.P.No.98 of 2009 in O.S.No.32 of 2006 of the Principal Senior Civil Judge, Srikakulam.

2. The petitioners herein are legal representatives of one Manmadharao.

3. A suit for recovery of money was filed against the estate of Manmadha Rao on the ground that the said Manmadharao borrowed a sum of Rs.2,50,000/- from respondent and executed a promissory note

dt.18-06-2003. The said Manmadharao having died, the petitioners, who are his legal representatives, were impleaded as defendants in the said suit. It was decreed on 25-08-2009 and the decree stated that if the petitioners are in possession of any particular property of the deceased Manmadharao, then only they would be liable to pay the suit amount. This question was left to be decided in the Execution Petition, which may be filed by respondent against petitioners.

4. After the suit was decreed, E.P.No.98 of 2009 was filed by respondent for realization of money due under the decree. A contention was raised therein by petitioners that the E.P. schedule property did not belong to deceased Manmadharao but it was the exclusive property of 1st petitioner.

5. By order dt.29-11-2013, the Court below directed issuance of attachment against the E.P. schedule property to enable the respondent to proceed further in the Execution proceedings overruling the objections of petitioners.
6. Challenging the same, C.R.P.No.693 of 2014 was filed by petitioners.
7. By order dt.07-08-2014, the said Revision was dismissed and a finding was given therein that the E.P. schedule property belonged to the deceased Manmadharao only, that the petitioners had not produced any material to show that they did not get the said property from Manmadharao, that Ex.A-2 registered sale deed dt.25-08-2004 was executed in favour of deceased Manmadharao in respect of the E.P. schedule property and therefore the E.P. schedule property belonged to him only.
8. After the dismissal of the said C.R.P. on 07-08-2014, E.P. No.98 of 2009 was sought to be further prosecuted by respondent.
9. Counter affidavit was filed by petitioners stating that they had deposited a sum of Rs.1,25,000/- before the Court below as per the directions of the High Court in the C.R.P. and that an appeal A.S.No.183 of 2009 against the judgment in the suit rendered by the Additional District Judge, Rajahmundry was challenged in a Second Appeal before the High Court and the same is pending. It was contended that pending Second Appeal, the E.P. schedule property cannot be put to sale.
10. By order dt.09-04-2015, the Court below dismissed the said application. It held that mere pendency of Second Appeal,

whose number was also not furnished by petitioners, without there being any stay of the proceedings in the E.P., is no ground to dismiss the E.P.

11. Challenging the same, this Revision is filed.
12. Learned counsel for petitioners sought to re-agitate the issue that E.P. schedule property did not belong to late Manmadha Rao and that it is the exclusive property of 1st petitioner, as a ground to challenge the impugned order. I am of the opinion that such a contention cannot be countenanced in view of the finding in the earlier order dt.07-08-2014 in C.R.P.No.693 of 2014 by this Court holding that late Manmadharao was the owner of the E.P. schedule property and that petitioners failed to show that the said property belongs to them exclusively.
13. Although learned counsel for petitioners sought to contend that the very decree in suit is incorrect, since the Executing Court cannot go behind the decree, even this contention is rejected.
14. Admittedly, there is no stay in the Second Appeal said to have been filed by petitioners before this Court challenging the judgment in A.S.No.183 of 2009 of the Additional District Judge, Rajahmundry. In fact according to the learned counsel for petitioners, the Second Appeal has been returned to comply with certain objections and has not been represented till now.
15. In this view of the matter, I do not find any merit in the Revision and it is accordingly dismissed with costs of Rs.2,000/- (Rupees Two Thousand only) to be paid to respondent within four (04) weeks from the date of receipt of a copy of this order.
16. As a sequel, miscellaneous petitions pending if any, shall stand

disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 18-09-2015

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