

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1330 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.10.09.2013 in E.A.No.121 of 2012 in E.P.No.285 of 2012 in O.S.No.419 of 2009 on the file of I Additional Senior Civil Judge, Warangal.

2. The petitioners herein are Judgment-Debtor nos.1 and 2 in the above suit.

3. The 1st respondent herein filed O.S.No.419 of 2009 against petitioners for eviction and for damages. The said suit was decreed on 15.07.2011.

4. Thereafter, the 1st respondent filed E.P.No.285 of 2012 for execution of the decree in the suit. At that stage, the petitioners filed E.A.No.121 of 2012 under Order 21 Rule 26 C.P.C. to stay further proceedings in the execution petition contending that the decree in the suit had been obtained by 1st respondent by playing fraud on the court and that the postal authorities were managed by 1st respondent.

5. This application was opposed by 1st respondent. She denied the said allegation and contended that notices

in the suit were served by the postal authorities; the decree was passed by the Court only as per law; and since the petitioners did not participate, they were set *ex parte* and the suit was decreed.

6. By order dt.10.09.2013, the Court below dismissed E.A.No.121 of 2012. It held that no material is placed by petitioners to prove that 1st respondent had managed the postal authorities and obtained an *ex parte* decree.

7. Challenging the same, the present Revision is filed.

8. Heard Sri B. Ranganatha Rao, counsel for petitioners/Judgment Debtor nos.1 and 2; and Sri P. Sadasiva Rao, counsel for 1st respondent. None appears for 2nd respondent, even though notice has been served on 2nd respondent.

9. The counsel for petitioners contended that the decree in the suit had been obtained by respondent by playing fraud on the court and that an application to set aside the *ex parte* decree has also been filed.

10. No material in support of plea of fraud is placed on record by the counsel for petitioners. There is no reference to any application for setting aside the *ex parte* decree having been filed in the affidavit filed by petitioners

in E.A.No.121 of 2012. Therefore, it is difficult to believe that petitioners had filed an application to set aside the *ex parte* decree. In the absence of any such material, it is not open to petitioners to raise such a plea for the first time in Revision before this Court.

11. Admittedly, the decree is sought to be executed by the same Court which passed the decree in O.S.No.419 of 2009 and not by a different Court to which the decree has been transferred. Therefore, Order 21 Rule 26 C.P.C. quoted by petitioners has no application to the present case.

12. It is settled law that executing Court cannot go behind the decree. Therefore, in my considered opinion, the Court below has rightly rejected E.A.No.121 of 2012. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

13. The interim order granted earlier in this Revision stands vacated.

14. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-07-2015

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