

HON'BLE SRI JUSTICE K.C. BHANU

AND

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

APPEAL SUIT No.722 of 2010

—

—

JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti)

The unsuccessful claim petitioner Firm viz., Jai Bharath Traders, Guntur, had filed this appeal suit under Section 96 of the Code of Civil Procedure, 1908 ('the Code' for brevity), assailing the order and decree dated 05.07.2010 in E.A.No.95 of 2008 in E.P.No.36 of 2008 in O.S.No.299 of 1993 passed by the learned V Additional Senior Civil Judge, Guntur, dismissing the said execution application filed by it under Order XXI Rule 97 of the Code seeking to allow the claim petition and dismiss the Execution Petition (EP) in regard to the claim petition schedule property.

2. We have heard the submissions of Sri Vedula Venkata Ramana, learned Senior Counsel, representing Sri Akkam Eshwar, the learned counsel for the appellant/claim petitioner Firm as well as Sri K. Durga Prasad, the learned counsel for the 1st respondent/decreed holder and perused the material record.

3. The parties in this appeal shall hereinafter be

referred to as the claim petitioner Firm and the 1st respondent/decreed holder for the sake of convenience and clarity. The other respondents 2 and 3 are the judgment debtors.

4. The introductory facts, in brief, are as follows:

The decreed holder had brought a suit O.S.No.299 of 1993 against the respondent Nos.2 and 3/judgment debtors for partition of plaint A and B Schedule properties and for allotment of one share in the said properties and also for awarding of Rs.72,500/- towards value of half a share in the plaint C-Schedule movable property and for costs and other allied reliefs. Though, the suit was originally brought against the 1st judgment debtor, the 2nd judgment debtor was impleaded during the pendency of the suit. The 1st judgment debtor had remained *ex parte* in the suit and the 2nd judgment debtor had filed a written statement and resisted the suit. After full fledged trial, the said suit for partition in O.S.No.299 of 1993 on the file of I Additional Senior Civil Judge, City Civil Court, Hyderabad, was preliminarily decreed on 08.02.2000 directing allotment of half a share in the plaint A and B Schedule properties. However, the suit insofar as half a share in C-schedule property was dismissed. Subsequently, a final decree was passed in the said suit for partition. Thereafter, the decreed holder had filed the E.P.No.36 of 2008 against the 2nd respondent/judgment debtor for handing over possession of the E.P. schedule properties. At that stage, the present claim petitioner Firm, had resisted the

delivery of the properties to the decree holder and had filed the claim petition in E.A.No.95 of 2008 under Order XXI Rule 97 of the Code for the aforesaid reliefs. The said claim petition was resisted by the decree holder by filing counter affidavit. At trial, one Dr. Atluri Gowri, who is said to be the Managing Partner of the claim petitioner Firm was examined as PW1 and exhibits P1 to P12 were marked on the side of the claim petitioner Firm. The G.P.A. holder of the decree holder was examined as RW1 and no documents were marked on the side of the decree holder. On merits, the Executing Court/the Court below had dismissed the claim petition by its order and decree dated 05.07.2010. Aggrieved of the said order and decree, the claim petitioner Firm had preferred the present appeal.

5. Before proceeding further, it is necessary to note that the trial Court having referred to the provision of Rule 97 of Order XXI had held that the claim petition filed by the claim petitioner firm is not maintainable and therefore, the claim petition is liable to be dismissed on the said ground. Therefore, the first question is – ‘whether the claim petition filed by the claim petitioner Firm, in the facts and circumstances stated supra, is maintainable or not?’ It is advantageous to refer to the provision of Order XXI Rule 97 of the Code, which reads as under:

“ORDER XXI – Execution of decrees and orders:

97. Resistance or obstruction to possession of immovable property:--

- (1) Where the holder of a decree for the possession of

immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

- (2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

In the decision in **N.S.S. NARAYANA SARMA AND OTHERS vs. M/s. GOLDSTONE EXPORTS (P) LTD. AND OTHERS**^[1]

the Supreme Court having referred to the above provision of law and other relevant provisions of the Code had held as follows: - **“From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property, the executing Court is competent to consider all questions raised by the person offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree”**..... **“Order 21 Rule 97, as aforesaid conceives of cases where delivery of possession to the decree holder or purchaser is resisted by any person. ‘Any person’, as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger”** **“We find that both either under the old Law or the present Law, the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21 Rule 97 has to be**

decided by the executing Court itself.” In ANWARBI vs.

PRAMOD D.A. JOSHI AND OTHERS^[2] the facts show that in execution proceedings an obstruction was caused by the appellant and he had declined to handover possession of the property to the Bailiff on the ground that he was legally entitled to be in possession of the said property. The appellant was not a party to the suit proceedings. The appellant made various applications including an application under Section 151 of the Code read with Order XXI Rule 35 and Rule XXI for adjudication of her rights. All the applications of the appellant have been dismissed on the ground that the same are premature since she is in possession. In this factual background, the Supreme Court held as follows: - **‘We, therefore, make it clear that the possession of the appellant cannot be disturbed except in accordance with law; and that in view of the obstruction raised by her to the execution of the said decree, the rights of the obstructionist will have to be decided in appropriate proceedings, in accordance with law. Unless and until such proceedings terminate in favour of the decree-holder, the decree-holder cannot take possession and the appellant is entitled to retain possession.’** In

BRAHMDEO CHAUDHARY vs. RISHIKESH PRASAD

JAISWAL AND ANOTHER^[3], the Hon’ble Supreme Court held as follows:

“It is easy to visualize that a stranger to the decree who claims an independent right, title and interest in the decretal

property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest de hors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him.”

The learned senior counsel for the claim petitioner Firm had also placed reliance on the following two decisions on the same aspect. (1) **SHREENATH AND ANOTHER vs. RAJESH AND OTHERS**^[4]; and (2) **BHANWAR LAL vs. SATYANARAIN**

AND ANOTHER^[5]. There is no need to multiply the precedents in view of the legal position which is very well settled. From the ratios in the various precedents referred to supra, it is clear that when any person claiming title to the property in his possession obstructs the attempts by the decree-holder to dispossess him from the said property, the executing court is competent to consider all questions raised by the person offering obstruction against the execution of decree

and pass appropriate order, which under the provisions of Order XXI Rule 103 is to be treated as a decree. Further, from the ratios in the precedents it is clear that such person claiming title and in possession and causing obstruction to the attempt by the decree-holder to dispossess him from the property can get his claim adjudicated even before losing his possession and such person may not be dispossessed till his rights are adjudicated and unless and until the proceedings initiated by that person before the executing court terminate in favour of the decree-holder. Therefore, the first aspect is to be answered in favour of the appellant/claim petitioner Firm holding that the claim petition filed before the executing Court is maintainable.

6. In this back-ground of the basic facts and the legal position, it is now necessary to refer to the pleadings of the parties.

7. (a) The case of the claim petitioner Firm, as stated in the claim petition, is as follows:

The claim petitioner is a Partnership Firm and Dr. Atluri Gowri, w/o. Purnachandra Rao, is its Managing Partner and Chaganti Radha Krishnamma and Atluri Annapurna are the other partners. The petition schedule property is the property of the claim petitioner Firm. The claim petitioner Firm learnt that the decree holder and the 2nd respondent/judgment debtor had colluded with each other and had played fraud on the Court and obtained a collusive decree from the Court of I Additional Senior

Civil Judge, City Civil Court, Hyderabad, in favour of the decree holder and against the 2nd respondent/judgment debtor with regard to other properties apart from the from the petition schedule property, which is also the schedule property of the judgment and decree dated 08.02.2000 in the aforementioned suit O.S.No.299 of 1993. It came to light that the decree holder had filed an Execution Petition against the 2nd respondent/judgment debtor, in collusion, for handing over petition schedule property, which is also the schedule property of the Execution Petition. The said E.P. is filed with a *mala fide* intention to defraud the properties of the claim petitioner Firm. The properties of the claim petitioner Firm are not family properties of any one, at any point of time, and the alleged claim of the decree holder against the 2nd respondent/judgment debtor in the aforementioned suit for partition that the properties are the family properties is false and the decree in partition suit was obtained by playing foul on the Court. The claim petition schedule property, which is also the schedule property of the Execution proceedings, is the exclusive property of the claim petitioner Firm and the said property is under active control, possession and management of the managing partner of the claim petitioner Firm and , therefore, the said property cannot be handed over by the 2nd respondent/judgment debtor to the decree holder and the decree holder cannot take possession of the said property from the 2nd respondent-judgment debtor. The respondent 1 and 2 herein, who are the decree holder and 2nd judgment debtor, respectively, have no rights over the said

petition schedule property. Hence, the claim petition may be allowed and the Execution Petition may be dismissed.

7. (b) Having so pleaded, the claim petitioner Firm had stated in the claim petition that it had filed along with the claim petition the copies of (1) Deed of Partnership, (2) Form No.A Certificate issued by the Registrar of Firms, (3) PAN Card of the Firm, (4) Income Tax acknowledgement of the Firm, (5) Form 2-D of Income Tax returns, (6) Form 2-D of Income Tax returns, and (7) Property Tax Demand notice and receipt and it is urged that the contents of the documents may be read as part of the claim petition; and, it is stated that the documents will substantiate that the petition schedule property i.e., the execution petition schedule property is the exclusive property of the claim petitioner Firm.

7. (c) It is pertinent to note that no schedule is annexed to the claim petition filed by the claim petitioner Firm. From the material papers filed by the claim petitioner Firm before this Court, when it is noticed that the schedule, if any, annexed to the claim petition is not filed, this Court had called for the record from the Court below and even the record sent by the said Court discloses that no schedule is annexed to the claim petition filed before the executing Court. Be that as it may.

8. The averments, in brief, of the counter of the decree holder are as follows:

The material allegations in the claim petition are false and the petition is not maintainable. The Managing

Partner of the claim petitioner Firm by name Dr. Atluri Gowri is no other than the second wife of the 2nd respondent/judgment debtor. At the instance of the 2nd respondent only the claim petition is filed by her to harass and delay the delivery of the property to the decree holder. The execution proceedings and the proceedings in O.S.No.299 of 1993 are between the father and son. Now the second wife of the 2nd respondent/judgment debtor, by alleging that she is not aware of the suit proceedings and that the property does not belong to the father and the son and further claiming the property to be the property of the Partnership Firm and showing the daughter of the 2nd respondent and other family members as Partners of the said Firm, had filed the claim petition. This shows the high drama behind the claim and the vexatious nature of the litigation, which was initiated to avoid the delivery of the property to the decree holder in the execution proceedings and make an unlawful gain. The 3rd respondent/judgment debtor is in no way concerned with O.S.No.299 of 1993. The claim petitioner Firm, which is said to be represented by Dr. Atluri Gowri as Managing Partner, is in no way concerned with the E.P. schedule mentioned properties. The property belong to the claim petitioner Firm is utterly false. No document is filed before the Court to prove even a *prima-facie* case. The copies of documents filed do not prove that E.P. schedule mentioned properties belongs to the claim petitioner Firm. The documents filed are no way concerned with the subject property. The 2nd respondent/judgment debtor, who is no other than the husband

of the Managing Partner of the claim petitioner Firm had colluded with her and after watching the proceedings all these years, the delivery was obstructed to with an intention to avoid the delivery of the property to the decree holder as per the orders of the Executing Court. The claim petition is silent as to how Dr. Atluri Gowri can represent the claim petitioner Firm and as to how she became the Managing Partner of the said Firm. Having grudge against the decree holder, the claim petition was fabricated and was got filed with a *mala fide* intention to grab the property. The E.P.No.36 of 2008, which was filed 15 years after filing of the suit O.S.No.299 of 1993, would show the long legal battle that was ultimately won by the decree holder. The allegation that the partition suit is collusive is false. The 2nd respondent/judgment debtor had filed written statement in O.S.No.8 of 2006 and in the written statement, he had clearly stated that he is no way concerned with the Firm Jai Bharat Traders and that the said Firm was closed long time back and that the partners had settled their dispute by way of arbitration and that no Firm was in existence. The documents showing the claim petitioner Firm with Dr. Atluri Gowri as a Managing Partner are created for the purpose of this claim petition and delaying the execution proceedings. A copy of the written statement of the 2nd respondent/judgment debtor in the above said suit on the file of I Additional District Judge, Guntur is filed to show the said facts. Hence, the claim petition may be dismissed.

9. At the time of enquiry before the executing Court, Dr.

Atluri Gowri, who is said to be the Managing Partner of the claim petitioner Firm, was examined as PW1 and exhibits P1 to P12 were marked. The decree holder was examined as RW1 and no documents were marked on his side. Since the executing Court had dismissed the claim petition on merits, the claim petitioner had preferred this first appeal.

10. The learned senior counsel had contended as follows: The trial Court had ignored exhibits P1 and P12, which had clearly established that the claim petitioner-firm has been reconstituted with Dr.Atluri Gowri as its Managing Partner. The learned Judge of the trial court had failed to take into account exhibit P2-income tax return for the assessment year 2007-2008 which would go to show that the firm is in existence. The learned Judge had failed to appreciate the question as to whether the property in dispute, namely, the land in an extent of Ac.2.73 cents, with buildings and machinery has been purchased by late Indira Devi or not. The learned Judge has not appreciated the documentary evidence in exhibit 'P' series including exhibits P5 to P11. The learned Judge ought to have appreciated the fact that the documents clearly show that the property was purchased by the claim petitioner firm and not Indira Devi. The trial Judge erred in holding that PW1 had failed to establish that the claim petitioner firm is in existence and that PW1 is a partner of the said firm. The learned Judge ought to have seen that the firm is a registered firm. The learned trial Judge ought to have seen that when once registration extracts of the documents are marked, the burden of disproving them is

on the decree holder.

11. Per contra, the learned counsel for the decree holder while supporting the order of the trial court had contended that the claim petitioner firm is not in existence and that PW1 is not the partner, much less, the Managing Partner of the said firm and that a non-existing firm is not entitled to file the claim petition and that the disputes among the partners were settled by way of arbitration proceedings and that the firm was closed long time back and that the claim petitioner firm is no way concerned with the E.P. schedule mentioned properties and that the property belongs to the claim petitioner Firm is utterly false and that there is no pleading in the claim petition as to how the firm has acquired the property and that no document is filed before the Court along with the claim petition to prove even a *prima-facie* case and that mere marking of documents in the evidence without any foundation in the pleadings is of no avail as the law is well settled that any amount of evidence without a pleading cannot be looked into and that the copies of documents and other documents filed do not either prove that E.P. schedule mentioned properties belong to the claim petitioner Firm or that the said firm is in existence and that the documents filed are no way concerned with the subject property and that the 2nd respondent/judgment debtor, who is no other than the husband of the Managing Partner of the claim petitioner Firm had colluded with her and that after watching the proceedings all these years, the delivery ordered by the executing court was obstructed to with an

intention to avoid the delivery of the property to the decree holder as per the orders of the Executing Court and that the appeal is devoid of merit and is liable to be dismissed confirming the orders of the court below.

12. Now the points that arise for determination in this first appeal suit are:-

- (1) Whether the claim petitioner firm is having right, title and interest in respect of the subject property? And, if so, whether this court is required to make an order allowing the claim petition and dismissing the execution petition insofar as the subject property is concerned?
- (2) Whether the decree and order of the trial court are unsustainable and are liable to be set aside as contended by the claim petitioner firm?
- (3) To what relief?

13. POINTS:

13.1 The pleadings of both the parties and the facts leading to the filing of the present first appeal by the claim petitioner firm and the decision of this court on the maintainability of the claim petition are already stated supra, in detail. It is not disputed before this Court that a claim petition filed under Order XXI Rule 97 of the Code stands on the same footing as that of a suit for declaration of title and that in an

application of the aforementioned nature, the right, title and interest of the claim petitioner/obstructionist will have to be decided and the dispute raised by the obstructionist has to be adjudicated by the Executing Court in the claim application and not by a separate suit and for this purpose, the executing court shall be deemed to have jurisdiction to decide all such questions arising between the parties. Therefore, the claim petition filed by the claim petitioner Firm has to be disposed of as if it were a proceeding for declaration of title of the claim petitioner firm in respect of the subject property. In the light of this legal position, the initial onus of proof as well as legal burden, which never shifts, are on the claim petitioner Firm and it is for the claim petitioner Firm to prove its right, title and interest in respect of the subject property, which is said to be the E.P. schedule property. Since the present first appeal arises out of an order made in a claim petition and as in the instant proceedings the claim petitioner firm has to establish its right, title and interest to the subject property and as the property involved is an immovable property, the pleadings and the evidence (both oral and documentary), particularly the documentary evidence are of significance.

13.2 In view of the rival contentions, it is to be first noted that except asserting that the claim petitioner firm is the owner of the subject property and that the decree holder is not entitled to execute the decree in the partition suit and seek delivery of the property, which is in possession of the claim petitioner firm, no other facts much less material facts as to how the claim

petitioner firm had acquired right, title and interest in the property are pleaded. Since the pleadings in the claim petition are already extracted supra, there is no need to further dilate on this aspect. Not even a single document of title was also filed by the claim petitioner firm along with the claim petition.

Therefore, the claim petition does not contain the material facts as regards the claim petitioner's title to the property. However, PW1 who is said to be the managing partner of the claim petitioner firm marked copies of certain registration extracts of sale deeds/sale deeds as exhibits P5 to P11. We shall deal with the same later at an appropriate place in this judgment.

13. 3 It needs to be restated that there is a reference to the schedule in the pleadings in the claim petition, but, in the material papers filed along with the memorandum of grounds of appeal, only the copy of the claim petition without any schedule was filed. In the circumstances, this Court had called for the record from the court below. Even in the record sent by the court below for reference in this first appeal, there is no schedule annexed to the original claim petition filed before the executing court. Thus, from the claim petition averments, there is no clarity as to in respect of which property the claim petitioner firm is claiming right, title and interest. It is stated in the claim petition that the claim petition subject property is the schedule property in E.P 36 of 2008. However, even the copy of the EP with schedule is not filed along with the material papers submitted to this court on behalf of the appellant. Therefore, the manner in which the claim petition is filed would

only show lack of diligence and *bona fides* on the part of the claim petitioner firm.

13.4 Be that as it may, the material record placed before this Court by the Registry includes a copy of the preliminary decree in the partition suit O.S.No.299 of 1993 and also the schedule filed by the decree holder along with the execution petition. The same on a perusal would show that the EP schedule property is Ac.2.71 cents of dry land covered by D.Nos.113/2, 114 and 115 with assessment Nos.451, 452, 453 and 453/A situate at Akkireddypalem village of Guntur Mandal of Guntur District within the following boundaries:

EAST : Dry land of Bhavanam Narappa Reddy
SOUTH : Ankireddypalem donka
WEST : Land of Duggempudi Ramireddy and Mettu Krishna Reddy
NORTH : Guntur to Narsaraopet Road

A perusal of the preliminary decree would show that there are two items in 'A' schedule apart from B and C schedules in the schedule of the preliminary decree. Amongst the said items of the schedule, B schedule relates to Ac.1.36 cents of dry land covered by D.Nos.113/2, 114 and 115 with assessment Nos.451, 452, 453 and 453A of Ankireddypalem village within the following boundaries:

EAST : Dry land of Surapuneni Rama Rao
SOUTH : Ankireddypalem donka

**WEST : Land of Duggempudi
Ramireddy
and Mettu Krishna Reddy
NORTH : Guntur to Narsaraopet Road**

The claim petitioner firm could not explain as to why the claim petition was filed before the executing court in such a casual manner.

13.5 Coming now to the evidence on record, PW1-Dr. Atluri Gowri, while claiming herself to be the Managing Partner of the claim petitioner Firm, had referred to in her affidavit filed in lieu of examination of chief, seven items of property as plaint schedule properties and had further affirmed that the claim petitioner firm had purchased the said properties under different registered sale deeds from the respective owners for valuable consideration as stated in the said affidavit. Let it be restated that there is no schedule attached to the claim petition and the copy of the plaint with schedule is also not filed with the claim petition. According to her version in the affidavit filed in lieu of examination-in-chief, item No.1 of the schedule properties was purchased under registered sale deed bearing No.621/1974, dated 19.02.1974 registered at Joint Sub-Registrar's Office, Guntur, by the firm through its partner; Item No.2 of the plaint schedule properties was purchased under registered sale deed bearing No.622/1974, dated 19.02.1974 registered at Joint Sub-Registrar's Office, Guntur by the firm through its partner; Item No.3 of the plaint schedule properties was purchased under registered sale deed bearing No.623/1974, dated

19.2.1974 registered at Joint Sub-Registrar's Office, Guntur by the firm through its partner; Item No.4 of the plaint schedule properties was purchased under registered sale deed bearing No.3270/1975, dated 7.7.1975 registered at Joint Sub-Registrar's Office, Guntur by the firm through its partner; Item No.5 of the plaint schedule properties was purchased under registered sale deed bearing No.3271/1975, dated 7.7.1975 registered at Joint Sub-Registrar's Office, Guntur by the firm through its partner; Item No.6 of the plaint schedule properties was purchased under registered sale deed bearing No.3272/1975, dated 7.7.1975 registered at Joint Sub-Registrar's Office, Guntur by the firm through its partner; Item No.7 of the plaint schedule properties was purchased under registered sale deed bearing No.3273/1975, dated 7.7.1975 registered at Joint Sub-Registrar's Office, Guntur by the firm through its partner. Thus, in her examination-in-chief, she had affirmed that all the above said properties purchased under the said different sale deeds constitute a single and contiguous bit of property of a total extent of Acs.2.71 cents and that the petitioner Firm was established therein, i.e., in the said property. She had further asserted that one Surapaneni Rama Rao, s/o. Naga Bhushanam, filed O.S.No.8 of 2006 on the file of I Additional District Judge, Guntur, against the claim petitioner Firm, respondent Nos.1 and 2 and one Ravindra Kumar, for partition of the properties of the petitioner Firm and that in the said suit a preliminary decree dated 8.2.2000 was passed and a final decree was also passed on 20.6.2005. She had

asserted that the preliminary decree obtained by the 1st respondent/decree holder against the 2nd respondent/judgment debtor in O.S.No.299 of 1993 on the file of V Additional Senior Civil Judge, Guntur, is a collusive decree and that the said suit is also a collusive suit and the E.P. proceedings for delivery of the property to the 1st respondent/decree holder by the 2nd respondent/judgment debtor are also collusive and that the said partition suit, which is a collusive suit, was filed by the decree holder and the judgment debtors and that the preliminary decree was obtained by playing fraud on the Court and that though the schedule properties are purchased by the individuals, but not on behalf of the claim petitioner Firm, still the properties belong to the claim petitioner Firm. Apart from the above sale deeds, she had also exhibited, the copies of Form-A Certificate issued by the Registrar of Firms, Tax demand notice issued by the Panchayat Secretary, Tax receipt issued by the Panchayat Secretary, intimation under Section 143 (1) of the Income Tax Act, 1961 and certified copy of Form-A Certificate issued by the Registrar of Firms, as exhibits P1 to P5.

13.6 We have carefully perused the exhibits P5 to P11. **Exhibit P5** is the registration extract of a sale deed dated 07.07.1975 bearing document no.3273/75 in the name of Jai Bharat Traders, represented by partner Atluri Indira Devi in respect of **Ac.0.36 ½ cents** from out of Door No.113/2-Ac.7.32 cents. **Exhibit P6** is the original sale deed dated 07.07.1975

bearing document no.3272/75 in favour of the said Indira Devi representing the said firm in respect of **Ac.0.36 ½ cents** out of total extent of Door No.113/2 Ac.7.32 cents. **Exhibit P7** is original registered sale deed dated 07.07.1975 bearing document no.3271/75 in favour of the said Indira Devi representing the said firm in respect of **Ac.0.32 ½ cents** out of total extent of Ac.6.22 cents comprised in Door No.114 Ac.2.66 cents and Door No.114 Ac.3.56 cents. **Exhibit P8** is original registered sale deed dated 07.07.1975 bearing document no.3270/75 in favour of the said Indira Devi representing the said firm in respect of Door No.114 Ac.2.66 cents and Door No.115 Ac.3.56 cents, i.e., total **Ac.6.62 cents** with assessment no.454 and Door No.4/87 with hutment therein. **Exhibit P9** is the registration extract of a sale deed dated 19.02.1974 bearing document no.623/74 in favour of Jai Bharat Traders, represented by partner Surapuneni Rama Rao in respect of **Ac.0.35 cents** with assessment no.412 and Door No.4/87C comprised in Door No.114/3-Ac.0.06 cents and Door No.115/2-Ac.0.35 cents. **Exhibit P10** is the registration extract of a sale deed dated 19.02.1974 bearing document no.622/74 in favour of Jai Bharat Traders, represented by partner Surapuneni Rama Rao in respect of **Ac.0.50 cents** with assessment no.411 and Door No.4/87B comprised in Door No.115/2-Ac.0.06 cents and Door No.113/2-Ac.0.44 cents. **Exhibit P11** is the registration extract of a sale deed dated 19.02.1974 bearing document no.621/74 in favour of Jai Bharat Traders, represented by partner Surapuneni Rama Rao in respect of Door No.113/2 **Ac.0.50 cents** with assessment no.410 and

Door No.4/87A with a tin sheet shed therein. The total extent covered by these documents is Ac.9.02 ½ _ cents. We have verified the schedules annexed to the above said deeds of sale under exhibits P5 to P11. The extent and the boundaries of none of the properties covered by the schedules of the said documents correspond directly either in extent or in regard to boundaries of the EP schedule property. Therefore, PW1 ought to have explained as to which of the exhibits P5 to P11 are relevant and the schedules of which exhibits correspond to the EP schedule property. Thus, there is no acceptable evidence that the properties or any part(s) of the properties covered by the above said exhibits correspond to the EP schedule property. PW1 did not clarify in her evidence as to which of the documents referred to supra relate to the property, which is the subject matter of the claim petition. She did not also clarify in her pleadings as to who are the said persons by names,

A. Indira Devi and S. Rama Rao and how they were associated with the claim petitioner firm at any time. It is the specific defence of the decree holder that the claim petitioner firm is not in existence and it was dissolved and that after arbitration amongst the partners, the firm was closed. He had asserted in his cross-examination that due to the death of the then managing partner in the year 1979, the firm was dissolved as by then all the partners had retired, i.e., even by the year 1976. Whenever a firm is dissolved either by death or otherwise and whenever a partner retires and whenever a firm is reconstituted with the remaining partners or by taking in new

partner(s), there will be some document evidencing the said facts and also the fact that the firm continued. In the case on hand, it is neither pleaded nor established as to how the firm had retained the properties covered by the above said sale deeds, exhibits P5 to P11. Whether the present claim petitioner firm is the same firm as mentioned in the above sale deeds or it is a new firm registered afresh with the same name is not pleaded and also not explained in the evidence of PW1. Exhibit P1 is the Form No. V in regard to change in the constitution of the firm of M/s. Jai Bharat Traders. The said document on a perusal would show that constitution of the firm M/s.Jai Bharat Traders had been altered and A.Udaya Gouri, A.Annapurna, A.Venkata Ramakrishna and Ch.Seetharamayya had joined as partners on 01.04.1986 and that A.Indira Devi had died on 29.09.1978 and had ceased to be a partner from that date and that S.Rama Rao and B.Purnachandra Rao had also ceased to be partners on and from 01.04.1996. Exhibit P2 is the intimation under Section 143(1) of the Income Tax Act by the firm M/s. Jai Bharat Traders regarding a return filed on 31.07.2007. Exhibit P12 is the Form A of the firm M/s. Jai Bharat Traders which shows that the duration of the firm is 'at will' and that there is a change of address on 31.03.1998 and 22.12.2005 and that A.Ramakoteswara Rao, K.Hymavathi, A.Indira Devi, S.Rama Rao, S.Subba Rao. Y.Vijaya Lakshmi, B.Purnachandra Rao had ceased to be partners of the firm on 29.03.1977, 07.09.1973, 29.09.1978, 01.04.1986, 29.03.1977, 31.03.1987 and 01.04.1986 respectively and that A.Gouri, A.Annapoorna (minor), A.Venkata Rama Krishna (minor) had

joined the firm on 01.04.1986 and that Ch.Radha Krishnamma had joined the firm on 29.09.1995 and that Ch.Seetharamaiah having joined the firm on 01.04.1986 had ceased to be a partner on 29.09.1995 and that the permanent address of the firm has been changed with effect from 22.12.2005. No deeds of reconstitution of firm or retirement deeds of the partners of the firm which were executed when some of the partners retired or ceased to be partners of the firm are filed and exhibited. As and when partners go out and new partners come in there shall necessarily be some document as there will be change in the shares of the partners. As and when the partners ceased to be the partners, whether or not the properties were distributed or partitioned and were taken away by the outgoing partners and whether or not the properties of the firm continued to be with the firm is not pleaded and proved. No books of accounts, if any, and audited and the balance sheets of the firm of the relevant years, which contain the details of the assets and liabilities of the firm, are filed and exhibited to show as to what are the assets of the firm as on the date of the claim petition. It is undisputed that if the gross receipts of the firm exceed a particular limit audit of the accounts is compulsory.

13.7 Be that as it may, whenever a firm institutes a suit or a proceeding like the present nature before a civil court, such suit or proceeding shall be instituted only if the firm is registered and the persons suing are or have been shown as partners in the firm. Therefore, as per the requirement of law, the plaintiff firm ought to have filed firm registration certificate-Form C

issued by the Registrar of Firms and also Form A showing the list of the partners of the firm as on the date of the institution of the claim petition. The claim petition shall not be instituted in the civil court unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. Form-C-the firm registration certificate of the claim petitioner firm is not even exhibited. Form-A showing the list of the partners as on the date of the institution of the claim petition is also not exhibited. Exhibits P3 and P4 are house tax receipt dated 08.03.2008 for the year 2008 and Notice of Demand for house tax bearing the same No.174513 in respect of a house in Ankireddipalem Grampanchayat with assessment No.597 in the name of Jai Bharat Traders. There is no pleading that the claim petitioner firm is paying house taxes and that the house with assessment no.597 is located in the subject property. The accounts of the firm, which are maintained in the regular course of the business of the firm, showing the incomes and expenditures on the properties of the firm are not filed. As already noted even the balance sheets of the relevant years, wherein the assets and liabilities of the firm would find a place are not filed.

13.8 To sum up, there is absolutely no pleading in the claim application filed before the executing court about the very acquisition of the subject property by the firm and there is no reference to any of the sale deeds under exhibits P5 to P11 in the pleadings of the claim petition. Therefore, the said documents, which have no foundation in the pleadings, do not

constitute valid evidence in a claim petition wherein the claim petitioner firm is required to plead and prove its right, title and interest in the property. Therefore, neither the oral nor the documentary evidence, which has no foundation in the pleadings deserves consideration and, therefore, cannot be looked into by this Court. Thus, in the claim petition, wherein right, title and interest in the immovable property are claimed, the claim petitioner firm has not at all discharged either the initial onus of proof or the legal burden, which is heavy and hence, we are of the considered view that the claim petitioner firm had failed to establish its right, title and interest in respect of the subject property. In a proceeding of this nature for declaration of right, title and interest, the claim petitioner succeeds on its own strength but not on the weakness, if any, in the defence of the decree holder/respondent.

13.9 Having regard to the reasons, we hold that the claim petitioner firm had failed to establish its right, title and interest in the subject property and that, therefore, not entitled to any relief in the claim petition filed before the executing court.

13.10 For the reasons assigned and the findings recorded, we find that the finding of the trial court that the claim petition is liable to be dismissed does not warrant interference.

14. In the result, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this

appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

27th April, 2015

Note: Issue CC in two days

(B/o)

MSR

[\[1\]](#) AIR 2002 SC 251

[\[2\]](#) (2000) 10 SCC 405

[\[3\]](#) AIR 1997 SC 856

[\[4\]](#) (1998) 4 SCC 543

[\[5\]](#) (1995) 1 SCC 6