

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4429 of 2014

ORDER :

This Revision is filed challenging the order dt.28.10.2014 in E.P.No.19 of 2014 in O.S.No.184 of 2010 on the file of Senior Civil Judge, Puttur.

2. The petitioner herein is the Judgment-Debtor in the said suit, which was filed for recovery of money by respondent against petitioner and others, and which has been decreed on 14.06.2013.

3. The 1st petitioner appears to have died, pending suit, and therefore the decree states that 2nd petitioner will pay out of the Estate of 1st petitioner which is in his hands, a sum of Rs.7,30,000/- to respondent together with interest at the rate of 12 % per annum from the date of filing of the suit, i.e., 15.03.2010 till the date of decree and thereafter at 6 % per annum on the principal amount of Rs.5,00,000/-, apart from costs of Rs.31,238/- out of the Estate of 1st petitioner.

4. After the decree was passed, the respondent/decreed holder filed E.P.No.19 of 2014 under Order 21 Rule 64 and 66 C.P.C. to sell the E.P. schedule property and to realize the E.P. amount. The E.P.

schedule property is an extent of Ac.0.37 cents in S.No.118/15, and according to respondent this property has been attached in the suit as per order dt.03.04.2010 in I.A.No.328 of 2010 and the said attachment was also made absolute on 14.06.2013 in the suit. The E.P. was filed for recovery of a sum of Rs.9,93,163.00 and costs of Rs.13,014.00.

5. The 2nd petitioner filed his counter contending that 1st petitioner had 1/5th share in the E.P. schedule property as per an award passed by the Mandal Legal Services Committee, Tirupathi under Section 20 of the Legal Services Authorities Act, 1987 in O.S.No.10 of 2010 on 08.03.2010; and so the respondent cannot proceed against the E.P. schedule property, as it and other properties which are subject to the said award are not yet divided.

6. By order dt.28.10.2014, the Court below overruled the said objection and allowed the E.P. The Court below held that since admittedly the 1st petitioner had a 1/5th share in the E.P. schedule property, the same can be sold, and merely because such a 1/5th share cannot be divided from the E.P. schedule property, the sale cannot be stopped.

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

8. Heard Sri C. Masthan Naidu, counsel for petitioners; and Sri O. Manohar Reddy, counsel for respondent.

9. The counsel for petitioners contended that the order passed by the Court below is incorrect and unsustainable; that even prior to the filing of suit O.S.No.184 of 2010 out of which this Revision arises, there was an award in O.S.No.10 of 2010 on the file of V Additional District Judge, Tirupathi before the Bench of Lokadalath, Tirupathi; and unless the parties to that award in O.S.No.10 of 2010 partition the E.P. Schedule property by metes and bounds, the E.P. schedule property cannot be sold.

10. I am unable to agree with the said contention.

11. There is no bar in law to sell an undivided share held by judgment-debtor in joint family property in execution of a money decree in the suit. The auction purchaser, after confirmation of the sale, would then have to file a suit for partition to get that undivided 1/5th share of deceased 1st petitioner.

12. Therefore, I am of the opinion that the Court below has rightly rejected the objection raised by petitioners and allowed E.P.No.19 of 2013.

13. Therefore, the Revision fails and is accordingly

dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-06-2015

Ndr/*