

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5123 OF 2015

ORDER:

This Civil Revision Petition, under Section 115 of C.P.C., is preferred by the petitioner challenging the order dated 27.10.2015, passed in E.A. No.142 of 2015 in E.A. No.141 of 2015 in E.P. No.71 of 2014 in O.S. No.40 of 2012 by the Senior Civil Judge at Bodhan, Nizamabad District.

The Revision Petitioner herein was the petitioner before the executing Court, who filed an application under Order XXI Rule 58 of C.P.C. to raise the attachment over the property as she purchased the property under a registered sale deed dated 13.07.2012 and she became the absolute owner of the property by virtue of purchase.

The only contention of learned counsel for the petitioner is that, without knowing the subsisting attachment over the schedule property on 02.07.2012, in Execution Petition filed for recovery of the decretal amount, she purchased the property and, hence, she is a *bona-fide* purchaser without notice of prior attachment and sought for stay of further proceedings in execution of the decree till disposal of the petition filed under Order XXI Rule 58 of C.P.C.

The executing Court dismissed the petition on the ground that the attachment was prior to purchase and the purchase is always subject to the attachment.

Assailing the order, passed by the executing Court dated 27.10.2015, the instant Revision is filed on various grounds and the main ground is that the petitioner is a *bona-fide* purchaser for valuable consideration without notice and, in case, the 1st respondent proceeds to execute the decree for realization of the decretal amount, the substantial rights of the petitioner would be affected and prayed to grant stay of further proceedings in E.P. No.71 of 2014.

Mr. M. Rajamalla Reddy, learned counsel for the petitioner, reiterated the said contention, during the course of argument.

As seen from the material available on record, by the date of purchase *i.e.*, 13.07.2012, the attachment was subsisting as it was affected on 02.07.2012, under Order XXXVIII Rule 5 of C.P.C. In a petition filed under Order XXXVIII Rule 5 of C.P.C. *i.e.*, attachment before judgment, when the property was attached, it would create a fetter on the rights of the parties to alienate the property free from any liability and the property, if alienated, is always subject to attachment. When the attachment is prior in point of time than the purchase, the petitioner is bound by the attachment subsisting

over the property for realization of the decree debt. The only contention of the petitioner before this Court is that she is a *bona-fide* purchaser for valuable consideration is a question of fact to be decided by a Court during enquiry and at this stage, in this petition, it cannot be decided.

On perusal of the impugned order under challenge, it is clear that the executing Court recording a specific reason that the attachment was prior in point of time and the purchase is always subject to attachment dismissed the petition. The order under challenge do not suffer from any illegality warranting interference of this Court by exercising power under Section 115 of C.P.C., since the jurisdiction of this Court is limited under Section 115 of C.P.C. Therefore, I find no ground to set-aside or modify the impugned order under challenge passed by the executing Court. However, the petitioner is at liberty to deposit the decretal amount if she desires to raise attachment and realize the same from the 2nd respondent, if advised.

Accordingly, with the above observation, the Civil Revision Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Revision, shall stand closed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 04-12-2015.
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