

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.886 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.27.01.2015 in E.A.No.286 of 2014 in E.A.No.453 of 2012 in E.P.No.38 of 2011 in O.S.No.94 of 2010 on the file of Principal Junior Civil Judge, Proddatur at YSR Kadapa District.

2. The petitioner is decree holder in OS.No.94 of 2010 filed against one Gopireddy Venkata Prasad Reddy, shown as 1st respondent herein. The said suit was decreed *ex parte*.

3. EP was filed by petitioner against 1st respondent. Notice in EP was served on a person by name Gowru Viswa Prasad Reddy, shown as 2nd respondent. The 2nd respondent engaged an Advocate by name Ramanjula Reddy and was set *ex parte*. The 2nd respondent signed as Gowru Viswa Prasad Reddy in the notice and also the vakalat filed on his behalf. An arrest warrant was issued by this court which was executed and 2nd respondent was produced before the court. He then showed identity particulars in the form of photo copy of ration card and Pan card which indicated that the name of the person arrested is Gowru Viswa Prasad Reddy, S/o.Bangaru

Reddy, the 2nd respondent, but not Gopireddy Venkata Prasad Reddy, S/o.Buchi Reddy, shown as 1st respondent. Thereupon, the executing court directed the petitioner to produce evidence with regard to identity particulars while releasing 2nd respondent on a personal bond by order dt.28.08.2012.

4. It is pertinent to note that 2nd respondent had also filed EA.No.453 of 2012 to condone the delay in filing the application to set aside the *ex parte* order passed in the said EP. He completed his side of evidence and petitioner also examined himself and the said E.A. is posted for further evidence of petitioner. It is the plea of 2nd respondent in EA.No.453 of 2012 that his name is not Gopireddy Venkata Prasad Reddy, but he is Gowru Viswa Prasad Reddy and he has nothing to do with execution petition.

5. At that stage, EA.No.286 of 2014 was filed by petitioner under Section 47 r/w Section 151 CPC to declare that the person Gopireddy Venkata Prasad Reddy and the person Gowru Viswa Prasad Reddy are one and the same and the respondent no.1 is the same person covered under the suit proceedings and execution proceedings.

6. The court below by the impugned order rejected it on the ground that petitioner had already been given an

opportunity to prove the identity of judgment debtor and that without producing such evidence in the EP or in EA.No.453 of 2012, he had unnecessarily filed EA.No.286 of 2014.

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

8. Although the counsel for petitioner sought to contend that he has filed EA.No.286 of 2014 only to decide the issue of identity of judgment debtor i.e., whether he is Gowru Viswa Prasad Reddy (2nd respondent) or Gopireddy Venkata Prasad Reddy (1st respondent), that it is the same individual who possesses both the names, I am of the opinion that the court below had already given such opportunity to petitioner both vide order dt.28.08.2011 in EP.No.38 of 2011 and in EA.No.453 of 2012 filed by 2nd respondent. The court below has not prevented petitioner from proving the said fact in either the EP nor in EA mentioned above.

9. In this view of the matter, there was no necessity for petitioner to file EA.No.286 of 2014 again to prove the said fact. The petitioner is free to lead evidence either in the EP or in EA referred to above on the point.

10. Therefore, I am of the opinion that the court below has rightly dismissed EA.No.286 of 2014 as being superfluous and unnecessary since there is no error of

jurisdiction in the trial court's order. I see no merit in the Revision. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-03-2015

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