

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.2117 of 2015

ORDER:

The petitioner filed an application under Order XXI Rule 58 CPC in E.P.No.64 of 2013 in O.S.No.224 of 2009 on the file of the learned Additional Senior Civil Judge, Eluru. By order dated 07.04.2015, the Executing Court rejected the application on the ground that the application schedule property and the E.P. schedule property were not tallying with each other. Aggrieved thereby, he filed the present civil revision petition under Article 227 of the Constitution.

By order dated 17.06.2015, this Court granted interim stay of all further proceedings in the execution petition taking note of the submission made on behalf of the petitioner that his property was being proceeded against in the said execution petition on the ground that it bears the same door number.

O.S.No.224 of 2009 was decreed for recovery of a sum of money on the basis of a pronote. The decree-holder therein instituted E.P.No.64 of 2013 for realisation of his decretal dues by putting to sale the E.P. schedule property. The E.P. schedule property was described as under:

“West Godavari District, Denduluru Mandal, Bhimadole Sub-registry, Pothunuru Panchayat area, Pothunuru Village, Ward No.4 R.S.No.39, R.C.C.Building bearing Door No.4-39, situated in a residential extent of Ac.0,05 cts., bounded by:

East : Panchayath road

South : Panchayath road

West : House of Doppalapudi Sambasiva Rao

North: House of Naganaboyina Satyanarayana

Within these boundaries an extent of Ac.0.05 cts., R.C.C. building of two portions with all usual easementary and passage rights.”

The petitioner filed the subject E.A. under Order XXI Rule 58 CPC claiming that in the guise of the schedule shown in the execution petition, his property, which is altogether different, was sought to be

proceeded against. He therefore sought raising of the attachment passed in respect of his property. The schedule attached to the subject E.A. filed by the petitioner is as under:

“West Godavari District, Denduluru Mandal, Bhimadole Sub-Registry, house site in an extent of 280.1/4 square yards covered by R.S.No.328/1 and RCC Building therein bearing D.No.4-39, situated in Pothunuru Village, bounded by:

East : Panchayathi Road

South : Panchayathi Road

West : House of Doppalapudi Sambasiva Rao

North: House site of Guttikonda Surayya

Within the boundaries house site in an extent of 280.1/4 square yards covered by R.S.No.328/1 and RCC building therein bearing D.No.4-39 situated in Pothunuru Village, Denduluru Mandal, West Godavari District.”

It is clear from a comparison of both the schedules that except for the northern boundary, the other boundaries tallied and more significantly, the house number is shown to be the same, being Door No.4-39 of Pothunuru Village. In the light of this parity, the Executing Court ought not to have summarily rejected the subject E.A. on the short ground that the schedules were not tallying with each other in toto. Order XXI Rule 58 CPC requires the Court to adjudicate upon any claim or objection which is raised as to the attachment of any property in execution of a decree. Once an objection was raised by the petitioner herein that in the guise of the E.P. schedule property his property was sought to be proceeded against, the Executing Court necessarily had to deal with such objection in exercise of powers under Order XXI Rule 58 CPC. The refusal by the Executing Court to do so by rejecting the subject E.A. filed by the petitioner therefore cannot be sustained. The order dated 07.04.2015 is therefore liable to be set aside and is accordingly set aside. The matter is remanded to the Executing Court for consideration of the subject E.A. on its merits.

Sri G.Chandra Sekhar Rao, learned counsel for the
1st respondent/decreed-holder, stated that the application filed by the

petitioner herein under Order XXI Rule 58 CPC was not maintainable in the light of certain other factors which need to be looked into. As the matter is being remanded to the Executing Court for consideration of the subject application on its merits, it would be open to the 1st respondent/decreed-holder to raise all his objections to the said E.A., including the issue of its maintainability. The Executing Court shall consider the matter on its own merits and pass appropriate orders in accordance with law. Be it noted that this Court has not made any observations on the merits and it is for the Executing Court to deal with the matter independently.

The civil revision petition is allowed subject to the above observations.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:02.09.2015

GJ