

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5253 of 2011

ORDER :

The revision petitioner is the judgment debtor in E.P. No.79 of 2007 based on decree in O.S. No.159 of 2005 on the file of the learned Principal Senior Civil Judge, Narsapur, West Godavari District. It is a money decree under execution as can be seen from the record. In the execution proceedings to proceed against the immovable property of the judgment debtor by attachment for sale when attachment was affected with notice for bringing the property under sale, objection is raised by the Judgment debtor to said attachment from service of notice, saying the property in question is an assigned land vide original patta submitted and exhibited as Ex.B-3 dated 21.01.1976 for the plot No.13 in R.S. No.411/8A of Injetipalem Village, H/o.Mogalturu Village Panchayat. It is one of the main contentions thereby of the land in question since assigned land unalienable of the attachment of the land with building is unsustainable and also for the reason he is an agricultural coolie and the residential house of an agricultural coolie is also exempt from attachment as per Section 60 C.P.C. The said contentions were negated by the trial Court and impugning the same, the present revision is filed.

2) Leave about his name as Sampath Rao, S/o.Surayya or Nageswara Rao from the surname

Putchakayala and father's name Surayya even taken as valid from Ex.B-3 patta, if at all shown he is with two names and he has no brothers with name Sampath Rao, to say the patta is granted in his name with that name of Sampath Rao; the very patta from its perusal from clause-9 when speaks after 10 years, it is alienable, the bar against alienation as contemplated by the provisions of the A.P. Act, 1977 have no application and thereby it is a freehold after 10 years.

Once such is the case, there is no prohibition to bring the property for attachment and sale equally for the residential house. No doubt, what he claimed is that he is under the classification of the Middle Income Class and with financial assistance of the Housing Board, Mogalturu, he constructed the house. However, but for Ex.B-5 so called certificate of the Panchayat Secretary, which is not even a public document and any oral say including through him, he did not file any record as to what is the financial assistance, if at all provided and what is the cost of construction he incurred and in the absence of which, if at all he is a regular coolie of agricultural works from hand to mouth for his earnings, it is hardly believable of he constructed the house to say it is on its face, highly unbelievable of he is an agricultural coolie and his residence is exempted from attachment. Thus, on both grounds, the objections raised against the attachment are untenable and the lower Court, is right in rejecting the objections of him, though not with such reasons supra. Thereby, for this Court while sitting in revision, there is

nothing to interfere.

3) It is however made clear that whatever the amounts paid by the judgment debtor, before or after filing of E.P, subject to proof for the said contention, besides what he deposited pending the revision, pursuant to the order of the Court, the judgment debtor is entitled to seek for adjustment to consider by the executing Court. Across the bar from the conceding to the request of the judgment debtor, by the decree holder, two months time is granted from today to liquidate the entire decree amount, else the executing Court can proceed further according to law.

4) Accordingly and in the result, the revision petition is disposed of, subject to the observations to adjust the payments made and amounts deposited as part satisfaction of the decree debt under execution to enable the judgment debtor to pay the balance within two months from today and in case of failure to proceed further in the execution petition in accordance with law. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.07.2016

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