

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4744 of 2015

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short) by the Judgment Debtor is directed against the docket order dated 13.08.2015 passed by the learned I Additional District Judge, Nellore in EP.no.27 of 2000 in OS.no.139 of 1997.

2. I have heard the submissions of the learned counsel for the revision petitioner/Judgment Debtor ('the JDr', for short) and the learned counsel for the respondent/Decree Holder ('the DHr' for short). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The DHr obtained a decree for recovery of money against the JDr. On the dismissal of the first appeal suit preferred by the JDr before this Court, the decree has become final. The DHr had applied for simultaneous execution of the decree and sought for realisation of the decree debt by arrest and detention of the JDr in civil prison and attachment of the EP schedule immovable property as well. However, the DHr has withdrawn the claim of arrest and prosecuted the EP insofar as the relief related to attachment and sale of EP schedule immovable property. The JDr filed a counter resisting the EP *inter alia* contending that in the affidavit filed in support of the EP, the name of the father of the DHr is mentioned as Subbarami Reddy while a perusal of the decree shows that his father's name is Narasimha Reddy.

Thus, the JDr raised a contest in regard to the identity of the person executing the decree and opposed for execution on the ground that the person who is executing the decree is not the DHr, who had obtained the Decree.

3.1 In view of the factual milieu and the contest disputing the identity of the DHr, the Court of execution by an order had directed the DHr to establish his

identity. On that, on 03.07.2015, the DHr filed a memo before the Court of execution along with the Photostat copy of his Adhar Card and Pan Card showing his identity, that is, as the Son of Subbarami Reddy. Though the father's name of the DHr that was mentioned in the EP is at variance with the name that was mentioned in the decree, the Court of execution, having been satisfied with the identity of the DHr and having come to the conclusion that the person executing the decree is the same person, who had obtained the decree, had passed the order, which is impugned in this revision, whereby attachment of immovable property was directed.

4. Aggrieved of the said orders, the JDr having filed this revision petition, while reiterating the defence which is urged before the Court below had further contended that the Court below ought to have considered the fact that the decree was obtained by one Boddu Masthan Reddy, S/o.Narasimha Reddy whereas the EP is being sought to be executed by Boddu Masthan Reddy S/o Subbarami Reddy, who is a totally different person and that, therefore, the Court below ought not to have over ruled the objection raised by the JDr and ought not to have passed the order impugned. Taking a clue from the fact that the DHr had already filed an application before the Court below for amendment of the decree insofar as it related to the father's name of the DHr, it was further sought to be contended that unless the petition filed for amendment of the decree is disposed of either way, the order impugned cannot be sustained and the execution of the decree cannot be further proceeded with.

5. In reply, the learned counsel for the DHr would submit that in the promissory note, the name of the father of the DHr is correctly mentioned as Subbarami Reddy, but, by an accidental slip, the name of the father of the DHr was mentioned in the plaint as Narasimha Reddy and that nobody noticed that mistake till the matter reached the stage of execution and that since the name of the father of the JDr is also Narasimha Reddy while mentioning the name of the father of the DHr in the plaint, the accidental slip had occasioned and that in the circumstances amendment of the decree was already sought and that the order which was passed by the Court below after

confirming the identity of the DHr cannot be faulted and that the said order is sustainable under facts and in law.

6. I have bestowed my attention to the facts and given earnest consideration to the submissions.

7. In the decree, the name of the father of the DHr was mentioned as Narasimha Reddy as the said name was also mentioned in the plaint though in fact the name of the father of the Promisee is Subbarami Reddy. It is not in dispute that the father's name of the Promisee was mentioned as Subbarami reddy in the suit promissory note. In the circumstances it is stated by the learned counsel for the DHr that mentioning of the name of the father of the DHr in the plaint is purely an accidental slip. However, in view of the fact that the Court below before passing the orders impugned had satisfied itself in regard to the identity of the DHr after securing necessary confirmatory information with reference to his father's name, this Court is of the view that the order impugned needs no interference more particularly when steps are already taken by the DHr for amendment of the decree insofar as it related to the father's name of the DHr. Except in regard to the father's name of the DHr there is no other dispute in regard to the identity of the DHr. The EP is only for attachment of immovable property and is at a nascent stage of attachment being affected as the Court only directed for issuance of Rule 54 attachment and notice by the impugned order.

8. Viewed thus, this Court finds that the order impugned brooks no interference.

9. In the result, the Civil Revision Petition is dismissed. However, the Court of execution is directed to first dispose of the application for amendment of the decree filed by the DHr in the first instance before proceeding further in the execution proceedings. While disposing the said application on merits, the Court below shall give an opportunity to the JDr to file his counter with all the pleas, which may be available to him under facts and in law. It is made clear that the said application shall be disposed of uninfluenced by the observations made, if any, in these orders. No costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:23.02.2016

Vjl