

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2201 of 2016

ORDER :

This Civil Revision Petition is filed challenging the order dt.04.01.2016 in EP.No.12 of 2015 in O.S.No.122 of 1996 on the file of the I Additional Junior Civil Judge, Kovvur.

2. The petitioner herein is the judgment debtor in the above suit which had been filed for recovery of money and which had been decreed on 16.12.1998.

3. Petitioner filed the E.P.No.12 of 2015 under Order 21 Rule 64 to 66 of CPC to sell the EP scheduled property in public auction and deposit the sale proceeds into the Court, so that he can realize the decretal debt. The EP schedule property is an extent of Ac.1-90 cents in R.S.No.250/1 of Ragolapalli Village, Tallapudi Mandal, West Godavari District. It was not mentioned that the EP schedule property had been attached pending suit. However, it was mentioned in the EP that earlier, petitioner had filed E.P.195 of 1999 which was closed on 26.08.1999 and subsequently he filed another E.P.No.307 of 2002 which was closed on 02.11.2006.

4. The 2nd respondent filed counter affidavit contending that the execution petition filed by the petitioner was hopelessly barred by time and that he had no saleable right in the EP schedule property, since he had already sold the EP schedule property and some other land to Smt Bolleddupati Nagamani of Tupakulagudem village under registered sale deeds dt.23.11.2002 and 28.06.2004 and delivered possession to her.

5. By order dt.04.01.2016 the Court below dismissed the said EP. It observed that in spite of the plea taken by the 2nd respondent that there was no attachment before judgment in the said suit, the petitioner did not file any rejoinder stating that there was attachment of the EP

schedule property before judgment and there is no material placed on record to say that there was any earlier attachment of EP schedule property which was in force. It also held that decree in the suit had been passed on 16.12.1998 and E.P. was filed on 06.02.2015 and therefore the EP was not filed within time.

6. Though counsel for the petitioner seeks to contend that the EP was presented within time, but it was returned and the delay in representation of the EP was condoned, the fact remains that there is no attachment of the EP schedule property. Having regard to the plea of the 2nd respondent that the EP schedule property had already been sold under registered sale deeds dt.23.11.2002 and 28.06.2004 and he had no subsisting interest in the property, I am of the opinion that the Court below was right in dismissing the EP. I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 115 of Code of Civil Procedure, 1908.

7. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

03rd June, 2016.

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