

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 1339 OF 2009

ORDER:

This Civil Revision Petition is directed against the order dated 02.12.2008 passed in E.P.No. 102 of 2006 in O.S.No. 963 of 1983 on the file of the Court of the IV Senior Civil Judge, City Civil Courts, Hyderabad.

The petitioner herein is the plaintiff in O.S.No. 963 of 1983. He filed E.P.No. 102 of 2006 under Order 21 Rules 43, 64 and 66 of the Code of Civil Procedure to sell Schedule 'A' and 'B' properties in order to realize the decretal amount.

The facts, which are not in dispute, are as follows:

Respondents 1 and 2 suffered a decree and judgment dated 24.08.1989 in O.S.No. 963 of 1982. In the said suit, I.A.No. 792 of 1999 was filed by the petitioner herein for declaration and recovery of possession of the property and for ascertaining mesne profits. Pending determination of the mesne profits, Respondents 3 to 5, who are the legal representatives of Respondents 1 and 2, were impleaded as party respondents to the said Application. Thereafter, a final decree was passed on 31.07.2003. Thus, Respondents 3 to 5 herein have become parties to the order dated 31.07.2003. Seeking execution of the said order, E.P.No. 102 of 2006 has been filed. For realization of the decretal amount of Rs.1,96,964/- in E.P., 'A' and 'B' Schedule properties were sought to be sold. Schedule 'A' consists of movable properties, viz. refrigerator, colour television, steel almyrah, etcetera. Schedule 'B' property consists

of premises bearing Municipal No.1-8-702/27/D, Padma Nallakunta, Hyderabad belonging to Respondents 3 to 5 herein.

In the counter-affidavit filed by the 4th respondent in E.P.No. 102 of 2006, a specific ground has been taken that the deceased 1st respondent has not left any property to be inherited and succeeded by Respondents 3 to 5 and hence, the decree passed against the 1st respondent is not executable against Respondent 2 (since died) and 3 to 5.

After the inquiry, E.P.No. 102 of 2006 was dismissed solely on the ground that the petitioner-decree holder failed to establish that Schedule 'B' property belonged to Respondents 1 and 2 and thereby, the same devolved upon Respondents 3 to 5, being their legal representatives.

On 16.08.2016, the 3rd respondent has filed an affidavit into this Court to the effect that she settled the matter with the petitioner and in that process, paid an amount of Rs.18,000/- towards full and final settlement. To substantiate the said fact, a copy of the cheque bearing No. 367508 dated 09.01.2003 drawn on Andhra bank at its Vidyanagar Branch Hyderabad for a sum of Rs.18,000/- has been produced. The said affidavit has been taken on record and accordingly, this Revision as against the 3rd respondent was dismissed on 16.08.2016.

Learned counsel for the petitioner submits that the Court below has erroneously recorded that the decree was passed against the 1st respondent only, whereas the judgment and decree dated 24.08.1989 shows that it was passed against both Respondents 1 and 2, husband and wife. He further submits that the Court below

has failed to consider the material available on record i.e. copy of the municipal tax assessment register evidencing the fact of the 2nd respondent being assessed to municipal tax, vouching the fact that Schedule 'B' property originally stood in the name of the 2nd respondent, who is none other than the wife of the deceased 1st respondent. Hence, he requests this Court to remand the matter for consideration afresh of these aspects.

Sri K.M. Mahender Reddy, learned counsel filed vakalat on behalf of Respondents 4 and 5. On 16.08.2016, though he sought time to secure instructions, he could not get the same. Hence, again, on 23.08.2016, he requested further adjournment. This time, the Revision was directed to be listed on 30.08.2016, subject to paying Rs.500/- to the Registrar (Administration), but the said order has not been complied with so far. Today, when the matter is taken up, there is no representation on behalf of Respondents 4 and 5.

Hence, perused the material available on record. A glance at the judgment and decree dated 24.08.1989 discloses that as a matter of fact, it was passed against Respondents 1 and 2. Respondents 3 to 5 were impleaded as the legal representatives of the deceased Respondents 1 and 2. The learned Senior Civil Judge has failed to take into account and consideration the said fact, while dismissing the Execution Petition. Further, while coming to a conclusion that it is for the decree holder to establish that the schedule properties mentioned in the Execution Petition belong to the deceased judgment debtor No.1 which are in the hands of judgments debtors 3 to 5, to sustain the Execution Petition, which

the decree-holder failed to do so, the learned Senior Civil Judge has failed to appreciate the material placed on record i.e. tax assessment register with respect to the right, title and ownership of Schedule 'B' property bearing D.No. 1-8-702/27/D, Nallakunta, Hyderabad. It is therefore, essential that the matter should be remanded to the learned Senior Civil Judge for ascertaining '*as to whether Schedule 'B' property originally stood in the name of the 2nd respondent or not and consequent upon her death, the same has been devolved upon Respondents 3 to 5, who are the legal representatives of Respondents 1 and 2*'.

Since the Revision as against the 3rd respondent has already been dismissed *vide* order dated 16.08.2016, now, insofar as Respondents 4 and 5 are concerned, it is allowed. The order dated 02.12.2008 in E.P.No. 102 of 2006 is set aside. The learned IV Senior Civil Judge, City Civil Courts at Hyderabad is directed to consider the matter afresh with respect to the above-framed question and pass appropriate orders. No costs.

Consequently, the Miscellaneous Applications, if any shall stand disposed of.

CHALLA KODANDA RAM, J.

30th August 2016

ksld