

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3132 of 2015

ORDER :

This revision petition, under Section 115 of the Code of Civil Procedure, filed by the 2nd Judgment Debtor is directed against the order dated 29.04.2015 of the learned Senior Civil Judge, Amalapuram passed in E.P.No.41 of 2015 in O.S.No.106 of 2003.

2. I have heard the submissions of the learned counsel for the

2nd Judgment Debtor – Revision Petitioner ('2nd JDr', for brevity) and the learned counsel for the Decree Holders – Respondents ('DHR', for brevity). I have perused the material record.

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

The sole plaintiff had obtained a decree for specific performance against the defendants 2 to 5 who are the legal representatives of the deceased sole defendant. The said decree is an *ex parte* decree. The defendants 2 to 5 filed an application for setting aside the *ex parte* decree and that I.A. No.698 of 2011 was dismissed by the trial Court by an order dated 16.07.2014. Therefore, the defendants 2 to 5 had preferred the C.M.A.No.7 of 2014 on the file of the learned II Additional District Judge's Court, Amalapuram. During the

pendency of the said C.M.A., the sole plaintiff/DHr had died. Be that as it may. The legal representatives of the sole plaintiff – DHr had filed the aforementioned execution petition for execution of the sale deed in respect of the E.P. schedule property in terms of the *ex parte* decree and for delivery of the E.P. schedule property. The 2nd JDr having received notice in the E.P. is contesting the E.P. While so, the C.M.A., which is filed by the defendants 2 to 5 assailing the orders dismissing the application filed seeking to set aside the *ex parte* decree, was dismissed as abated for not bringing on record the legal representatives of the sole respondent-plaintiff therein. Therefore, the defendants 2 to 5 had filed three applications viz., (i) for condonation of delay; (ii) for setting aside the abatement caused on the death of the sole respondent-plaintiff; and (iii) for permission to bring on record the legal representatives of the deceased respondent-plaintiff as respondents 2 and 3 in the said C.M.A. The said applications are pending before the Court below. Since there are no stay orders granted in the C.M.A. and as the C.M.A. was already dismissed as abated since the sole decree holder had died, the executing court had proceeded with the execution petition. On 29.04.2015, after the decree holders had filed a draft sale deed before the executing court, the 2nd JDr had filed a counter stating the stage at which the C.M.A. is pending. As there are no stay orders, the Court of execution overruled the objections in the counter of the 2nd JDr. Since a draft sale deed is filed, the executing Court had directed the copy of the draft sale deed

to be served on the judgment debtors as required under Order XXI Rule 34 of the Code and had also directed that a notice be issued to the Judgment Debtors 2 to 5 to file their objections in writing to the draft sale deed filed by Decree Holders. That order is now under challenge in this C.R.P.

4. The learned counsel for the 2nd JDr while narrating the sequence of events, which are stated supra, would submit that the death of the plaintiff who is the respondent in the C.M.A. is not brought to the notice of the 2nd JDr and also the other defendants who are the appellants in the C.M.A. and that without bringing the fact in regard to the death of the decree holder – sole plaintiff to the notice of the judgment debtors, the legal representatives of the sole decree holder had filed the execution petition and that at the relevant point of time, one of the sons-in-law of the decree holder had died and that in view of that calamity, no steps could be taken within a reasonable time and that therefore, the C.M.A. was dismissed as abated and that in the circumstances, the present C.R.P. is filed. He had prayed for an opportunity to be given to the Judgment Debtors to have the applications in the C.M.A. disposed of on merits before further steps are ordered and taken up in the execution petition.

5. Per contra, the learned counsel for the Decree Holders would submit that the order impugned in the civil revision petition is only an order directing notice under Rule 34 of Order XXI and that the said order is not assailable under Section 115 of the Code and that the Judgment Debtors filed a false affidavit

before the Court of execution stating that stay orders are in force and were extended until further orders, even though no such orders are granted by this Court.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions. The facts are narrated supra, in detail. Hence, there is no need to state them once again. It is to be noted that after obtaining a decree [*ex parte* decree] in a suit for specific performance, the sole decree holder died. The application of the defendants 2 to 5 to set aside the *ex parte* decree was dismissed on merits. Their C.M.A. also now stands dismissed as abated in view of the death of the sole plaintiff - decree holder and for not bringing his LRs on record within the time allowed under law. Be it noted that the applications filed to set aside the abatement to condone the delay and to bring on record the legal representatives of the sole decree holder-respondent in the C.M.A. are pending consideration before the Court below. Meanwhile, the legal representatives of the deceased decree holder had brought the E.P. for execution of the decree. The E.P. is at the stage of 2nd JDr filing her objections to the draft sale deed filed by the decree holders. As already noted, the Court of execution by following the correct procedure had directed issuance of notices to judgment debtors 2 to 5, including the present revision petitioner. Since a draft sale deed was filed, the executing Court directed the copy of the draft sale deed to be served on the judgment debtors as required under Order XXI Rule 34 of the Code and directed a notice to be issued to the Judgment Debtors 2 to 5 to file their

objections in writing to the draft sale deed filed by Decree Holders. In fact, after 29.04.2015, the execution petition came up for hearing before the Court of execution; and on 26.06.2015, the 2nd JDr, who is served with the notice under Rule 34 of Order XXI, having entered appearance through an advocate, had filed her counter. Therefore, the execution petition is at the stage of the executing court either approving or directing altering of the draft sale deed after taking into consideration the valid objections, if any, of the 2nd JDr. The 2nd JDr, is therefore, now having an opportunity to make her submission based on the contents of her counter. On hearing the 2nd JDr, the Court of execution is required to pass an order either approving the draft sale deed or directing altering of the draft sale deed filed by the DHrs as it thinks fit and proper. Therefore, this Court is of the considered view that it is for the 2nd JDr – revision petitioner to approach the executing Court and contest the execution petition by raising her objections, if any, to the draft sale deed of the DHrs, but the 2nd JDr – revision petitioner is not entitled, under facts and in law, to challenge in this revision the order of the executing court, dated 29.04.2015, which is an order passed by following the procedure established by law. It is necessary to mention that in this revision petition this Court is not obligated to make any observations on the merits of the three applications, which are filed by the defendants 2 to 5 in C.M.A.No.7 of 2014 on the file of the learned II Additional District Judge, Amalapuram.

7. In the result, this C.R.P. is dismissed. However, it is

made clear that dismissal of this revision petition shall not preclude the 2nd JDr from making a request to the learned II Additional District Judge, East Godavari District at Amalapuram to dispose of the Interlocutory Applications in C.M.A.No.7 of 2014 as expeditiously as possible in the interests of justice. It is further made clear that if any such request is made, the learned II Additional District Judge shall consider the same as per law keeping in view the facts and the interests of both the parties.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M. Seetharama Murthi, J

11th April, 2016

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