

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.896 of 2016

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This Civil Revision Petition is filed challenging the order dt.31-07-2015 in E.P.No.86 of 2012 in O.S.No.189 of 2009 of the Principal Junior Civil Judge, Tadepalligudem.

3. Petitioner herein is the J.Dr. in the suit. 1st respondent herein had filed the suit against the petitioner for recovery of money on the basis of a promissory note and the suit was decreed on 09-03-2011 for a sum of Rs.83,225/- and costs of Rs.2,788/-.

4. Thereafter, the E.P.No.86 of 2012 was filed by the respondent before the Court below for attachment of the E.P. schedule property under Order 21 rule 54 CPC, for sale of the same and for realization of the E.P. amount out of the sale proceeds under Order 21 Rules 64 to 66 CPC. The E.P. schedule property is northern portion of a residential Mangalore tiled house.

5. Counter affidavit was filed in the E.P. by the petitioner raising a plea that he is an agriculturist, that this was admitted by the respondent-D.Hr. in the suit

proceedings, that the E.P. schedule property is a dwelling house meant for his personal use for living and for keeping agricultural implements which are exempted under Section 60 CPC. It was also pleaded that it is the ancestral property of the petitioner in which his brother and his children are also having share.

6. The respondent did not examine any witnesses and did not also mark any documents. But the petitioner examined himself as R.W.1 and another witness as R.W.2 and marked Exs.R-1 to R-3.

7. The Court below by order dt.31-07-2015 allowed the E.P. and rejected the contention of the petitioner that the petitioner. It held that the petitioner did not file any document to show that the E.P. schedule property is his ancestral property and that the petitioner admitted that Ex.R-3 was the patta for house site issued to his father and that the said patta has nothing to do with the property described in the E.P. schedule. It also rejected Exs.R-1 and R-2, the depositions of P.Ws.1 and 2 in O.S.No.189 of 2009 on the ground that he should have taken steps to summon the said witnesses for confronting those depositions. It also held that R.Ws.1 and 2 admitted in their cross examination that they have not filed any document to show that the E.P. schedule property is being used by the petitioner for keeping agricultural implements and that the petitioner did not adduce any evidence in support of his plea that he is an

agricultural coolie. It also observed that the E.P. schedule property is not assigned land and was not exempted from attachment under Section 60 CPC.

8. Challenging the same, this Revision Petition is filed.

9. Learned counsel for the petitioner contended that the Court below did not properly appreciate the evidence of R.Ws.1 and 2 and it also ought to have considered the evidence adduced on behalf of the respondent in the suit O.S.No.189 of 2009.

10. It is settled law that the evidence adduced in the suit does not automatically become evidence in the E.P. So it is not open to the petitioner to contend that the evidence of P.Ws.1 and 2 in O.S.No.189 of 2009 has to be accepted as evidence in the E.P. when the said witnesses have not been summoned and confronted with those depositions. Having pleaded that he is an agricultural coolie, the burden is on the petitioner to establish the same. In the grounds of Revision Petition, the petitioner described him as a businessman and not as an agricultural coolie. Therefore, it is clear that the plea of the petitioner that he is an agricultural coolie is not true.

11. Ex.R-3 filed by the petitioner does not relate to the E.P. schedule property and it is a patta issued to the petitioner's father for a different land. Having pleaded the exemption under Section 60 CPC, it is for the petitioner to

adduce evidence in support of the said plea but he has not discharged the burden of proof.

12. I am of the opinion that the Court below correctly appreciated the evidence on record and rejected the objections of the petitioner and allowed the E.P. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 115 CPC.

13. Therefore, the Civil Revision Petition is dismissed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-06-2016

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