

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.1088 of 2011

JUDGMENT:

This Second Appeal is filed under Section 100 of Code of Civil Procedure ('CPC' for short) by the unsuccessful Claimant/appellant in E.A.No.127 of 2000 in E.P.No.30 of 2000 in O.S.No.04 of 1999 on the file of Principal Junior Civil Judge, Tadepalligudem, whereby the claim petition filed under Order 21 Rule 58 of CPC by the Claimant was dismissed, holding that the claimant failed to prove the claim over the schedule property, sought to be sold in execution of the decree.

2. For convenience of reference, the ranks given to the parties before the Executing Court will be adopted through the Judgment.

3. The Claimant filed Claim Petition under Order 21 Rule 58 of CPC to adjudicate his claim over the schedule property, which is brought for sale, for realization of the debt due under the Decree in O.S.No.4 of 1999, contending, that the claimant is the absolute owner of the property and he is having right and title over the suit schedule property as it was allotted to his share in the partition between himself and his father i.e., second respondent/J.DR in the EP and the same was reduced into writing as Partition List on 18.10.1989, since, then he is in possession and enjoyment of the schedule property and therefore, he is the absolute owner of the EP schedule Property and prayed to raise attachment allowing his claim.

4. First Respondent filed Counter denying the material allegations, contending that the second respondent/JDR is the owner of the property and the Claimant is nothing to do with the schedule

property. During pendency of the E.A, second respondent/J.Dr died and no steps were taken to implead the legal heirs of second respondent. Hence, the E.A against second respondent was dismissed.

5. Basing on the above pleadings, the Executing Court framed two points for consideration.

6. During enquiry, on behalf of claimant, Pw.1 was examined and Exs. A.1 to A.4 were marked. On behalf of respondents, Rw.1 was examined and no documents were marked.

7. Upon hearing the arguments of both counsel, the Executing Court dismissed the claim of the Claimant/appellant on the ground that the claimant miserably failed to establish his right over the schedule property sought to be sold in execution of the decree for realization of the decretal amount.

8. Aggrieved by the Order and Decretal Order passed by the Executing Court, the claimant being unsuccessful preferred an appeal in A.S.No.61 of 2002 on the file of Senior Civil Judge, Thadepalligudem, which ended in dismissal by Order dt. 2.07.2010, while confirming the findings recorded by the Executing Court.

9. Aggrieved by the concurrent findings recorded by both Executing Court and the Appellate Court, the present Second Appeal is preferred raising several contentions.

10. The appellant formulated five substantial questions of law and all of them are only questions of fact, but not the substantial questions of law. In any view of the matter, it is evident from the record that the Claimant failed to substantiate his contention that there is a partition, which was allegedly reduced into writing as

Partition List dt. 18.10.1989, which is the basis for his claim. In the absence of such documentary evidence, the claim of the Claimant based on Special Notice and Tax Receipts issued by Tadepalligudem Municipality and the electricity bills evidencing payment of consumption charges to Electricity Department would not establish the right of the claimant/appellant in the schedule property. Ex.A.4 is the Order Copy in I.A.No.32 of 2000 in O.S.No.01 of 2000 and during appeal, Certified Copy of Decree and Judgment in O.S.No.01 of 2000 on the file of Principal Junior Civil Judge, Tadepalligudem was marked as Ex.A.5, as additional evidence, by filing a Petition under Order 41 Rule 27 of CPC. But, the Trial Court and the Appellate Court concurrently held that Claimant/Appellant miserably failed to establish his claim as there is no evidence to support the claim of the Claimant. Therefore, in view of the concurrent facts findings, recorded by both Executing Court and the Appellate Court, I find no question of law much less substantial question of law to admit the present appeal as this Court cannot interfere with the concurrent fact findings recorded by the trial Court and the Appellate Court by exercising the power conferred by Section 100 of CPC, as the scope under Section 100 of CPC is limited and hence, this Second Appeal is liable to be dismissed.

11. Accordingly, this Second Appeal is dismissed at the stage of admission, but without costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 28-07-2016.

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