

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1680 OF 2016

ORDER:

This revision is filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the order dated 10.01.2016 passed by the Principal Senior Civil Judge, Sompeta, in E.P. No. 46 of 2014 in O.S. No.70 of 2009, whereby the E.P. filed for attachment and sale of property for realization of money decree was ordered.

02. It is the case of the petitioner that the respondent herein filed E.P. stating that the E.P. schedule property belongs to the respondent/Judgment Debtor, and filed E.P. to attach and sale of the schedule property, to realize the decree debt.

03. The petitioner herein filed counter in E.P. contending that his wife R.W.2 is the owner of the property, having purchased the same from one Kolli Vasulu under original of Ex.R.1 dated 30.04.1987, got obtained approved plan from Gram Panchayat under Ex.R.2 dated 20.08.1989 and paying property tax by R.W.2 herself. Thus, wife of the Judgment Debtor is the absolute owner of the property. Therefore, the attachment cannot be made absolute and the property cannot be brought to sale for realization of the decree debt, prayed to dismiss the E.P.

04. During the course of enquiry, Decree Holder and the adjacent owner, Arangi Venkataramana, were examined as P.Ws.1 and 2, and the Judgment Debtor and his wife were examined as R.Ws.1 and 2. No document was marked on behalf of the Decree Holder, and on behalf of the respondents, Exs.R.1 to R.13 were marked.

05. Upon hearing argument of both the sides, the executing court allowed the petition recording a finding that non- examination

of scribe or attestors of Ex.R.1 is sufficient to hold that R.Ws.1 and 2 purchased the property and that an inference was drawn that the property belongs to the respondent/ Judgment Debtor, since no objection was raised by the Judgment Debtor at the time of attachment, which implies that he has no objection whatsoever, to proceed against the property.

06. The said finding is challenged in this revision on the ground that the trial court did not appreciate the evidence in proper perspective and recorded perverse finding, ignoring the material available on record, and committed an error.

07. During hearing, Sri P. Raj Kumar, learned counsel for the petitioner, would contend that the trial court totally ignored the material on record, passed an erroneous order, though the petitioner proved that his wife (R.W.2) is the absolute owner of the property. The voluminous documents, Exs.R.3 to R.13 – House Tax demand notices and receipts issued by the Panchayat, Samantha Ramachandrapuram Village, Kanchili Mandal, clinchingly established that R.W.2 is owner of the property and R.W.1 is not the owner of the property, but this fact was not considered by the executing court.

08. Whereas Sri A.Ravi Shankar, learned counsel for the respondent, supported the order on the ground that the petitioner herein did not raise any objection at the time of attachment of the property which implies that he has no objection to proceed with the sale of the property after attachment, to realize the decree debt.

09. Considering rival contentions and perusing the material available on record, the point that arise for consideration is,

Whether the Decree Holder be permitted to proceed to sell the schedule property for realization of the decree debt?

POINT:

10. According to the petitioner, his wife (R.W.2) is the owner of

the property and, in support of his contention he produced Exs.R.1 to R.13 - certified copy of the registered sale deed, original approved plan and original tax receipts, evidencing purchase of the vacant site by R.W.2 from one Kolli Vasulu under registered sale deed and obtained approved plan from Gram Panchayat SRC Puram, Kanchili Mandal under Ex.R.2 and, thereafter paying house tax to the panchayat concerned. But the trial court did not record any finding as to how evidence of R.Ws.1 and 2 is disbelieved. But on ground that the scribe and attestors were not examined, rejected the claim of the petitioner, drawing inference against him and on the ground that the petitioner did not raise any objection at the time of effecting attachment of the property.

11. When the petitioner produced documentary evidence besides oral evidence, the court is bound to consider and if the court is not inclined to rely on the evidence of the respondent, has to record reasons to discredit the evidence of such witnesses, however documentary evidence, more particularly, the registered document - Ex.R.1 and the approved plan which is issued by the public authority clinchingly establish that R.W.2/wife of the revision petitioner is the owner of the property. But the executing court drawn and inference that both R.Ws.1 and 2 are the owners of the property and allowing the E.P. on the ground of non-examination of scribe and attestor is fatal, when the registered document is in the name of R.W.2, and the plan was approved in the name of R.W.2 and continuing to pay property tax to the panchayat, drawing such inference is without any basis and on the basis of such inference, the executing court cannot pass such an order holding that both R.Ws.1 and 2 are the owners of the property. Therefore, the order passed by the executing court is erroneous on the face of the record.

12. One of the contentions raised by Sri A. Ravi Shankar, learned counsel for the respondent, that the affected party did not

approach the court by filing revision under Section 115 of the Code.

13. Undoubtedly, the wife of the petitioner (R.W.2) is the owner of the property and she cannot approach this Court by way of revision, when she is not the party to the execution petition. The petitioner, being the Judgment Debtor in execution petition, is the aggrieved person, and, therefore he approached this Court. Hence, I find no merit in the contention raised by the learned counsel for the respondent.

14. On over all consideration of entire material available on record, it is evident that the executing court did not appreciate the evidence in proper perspective and ordered the execution petition.

15. The scope of revision under Section 115 of the code is limited and when the subordinate court has exercised its jurisdiction, which is not vested in it by law, or to have failed to exercise the jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity the High Court may make such order in the case as if it is fit and the Code made provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. Thus, when the Court exercises its jurisdiction, which is not vested on it by law, or illegal exercise of the jurisdiction, the Court can interfere under Section 115 of the code.

16. In the present case, totally perverse finding is recorded ignoring the material evidence on record, drawing inferences, which are impermissible under law. Hence, I find that the Order impugned in the revision is erroneous since, the executing court illegally or irregularly exercised the jurisdiction in deciding execution petition and the impugned order is liable to be set aside.

17. Accordingly, the revision is allowed setting aside the order

dated 07.01.2016 passed by the Principal Senior Civil Judge, Sompeta, in E.P. No.46 of 2014 in O.S. No.70 of 2009. However the Decree Holder is permitted to file execution petition, for realization of the decree debt, and to proceed against the property of the petitioner, or proceed in accordance with law, except the property in dispute.

18. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 01.07.2016

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