

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4490 of 2015

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 by the Judgment Debtor is directed against the orders dated 09.09.2015 of the learned Senior Civil Judge, Kandukur passed in EP.no.8 of 2015 in OS.no.93 of 2005.

2. I have heard the submissions of the learned counsel for the revision petitioner/Judgment Debtor ('the JDr', for brevity) and the learned counsel for the respondents/Decree Holders ('the DHrs', for brevity). I have perused the material record.

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

3.1 The DHrs having obtained a decree for recovery of money had filed the execution petition (EP) for recovery of an amount of Rs.4,85,681/- with subsequent interest and costs. In the said EP filed for realisation of the decree debt, the DHrs had sought attachment and sale of six items of immovable property of the JDr shown in the EP schedule. The extents of the said six items, stated to be in the enjoyment of the JDr, are Ac.2.47 cents, Ac.1.33 cents, Ac.0.86 cents, Ac.0.57 cents, Ac.1.96 cents and Ac.1.17 cents respectively and the total value of the said properties, as per the value of the DHr mentioned in the EP schedule, is Rs.5,00,000/-.

3.2 In support of the said relief claimed in the execution petition, the case of the DHrs is that despite the decree granted, the JDr did not pay any amount and that the entire decree debt is due and that, therefore, the DHrs are entitled to seek attachment and sale of the EP schedule properties for realisation of the decree debt.

3.3 On the other hand, the case of the JDr is that the first appeal suit preferred is pending; however, no stay orders are granted in the first appeal suit; and that it is not necessary to attach all the properties mentioned in the EP schedule and bring all of them to sale considering the market values of the properties and also the amount due to the DHrs in the EP; and that attachment of one item of the properties in the EP schedule would be sufficient for realisation of the entire decree debt; but, the DHrs had intentionally shown all the properties in the EP schedule by mentioning low and incorrect values of the said properties to make a wrongful gain; and that the JDr is not the absolute owner of the EP schedule properties; and that the said properties are his ancestral properties; and that the JDr is not having full rights in the properties; and that the said fact is known to the DHrs.

3.4 On merits, the Court of execution having over ruled the objections in the counter of the JDr had ordered attachment of the EP schedule properties by the order impugned and further directed the execution petition to be listed on 08.10.2015. In the said orders, the Court below had observed to the effect that though the JDr had pleaded that attachment and sale of one of the properties would be sufficient to satisfy the decree debt, the valuation of the properties shown in the EP schedule would be considered individually at the time of sale and that the JDr is at liberty to plead as to sale of which one of the properties would be sufficient for realisation of the decree debt at the time of proclamation of sale. It was further observed in the orders impugned that though the JDr had pleaded that he is only having a share, no third party claimants have come before the executing Court objecting for the attachment of the EP schedule properties.

4. At the hearing, the learned counsel for the JDr, while reiterating the contentions of the JDr which are already stated supra, would submit that as per the last proviso to Order XXI Rule 17 of the Code of Civil

Procedure, the Court of execution has to consider the valuation of the EP schedule properties even at the time of ordering attachment and that as per the said proviso, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree and that, therefore, the Court of execution is obligated to examine the facts in regard to the value of the property to be attached by following the provision of law even before an order directing to attach the property is made in the execution; and that, in the case on hand, the Court of execution did not consider the objection of the JDr that the DHrs have shown incorrect and low values of the properties to be attached and the further contention that all the properties need not be attached and that attachment of one of the properties would be sufficient as the value of one of the six items of property nearly corresponds with the amount due under the decree; and that therefore, the Court below was in error in overruling the said objections of the JDr. He would further contend that as per the first proviso to Order XXI Rule 66 sub-rule (2) where notice of the date for settling the terms of the proclamation has been given to the JDr by means of an order under Rule 54, it shall not be necessary to give notice under this Rule to the JDr unless the Court otherwise directs; and that in view of the said proviso, the JDr may not be given notice under this Rule unless the Court otherwise directs and that therefore, the JDr may not have an opportunity to again raise objections under Rule 66 and hence, the Court of execution ought to have considered the objections raised by the JDr in regard to incorrect and improper valuation of the properties in the EP by the DHrs and also the objection that attachment and sale of one of the EP schedule properties would be sufficient in the present case. He would finally contend that the order passed without considering the objections of the JDr is unsustainable.

4.1 He had placed reliance on the decision of this Court in N. Mohana Kumar v. Bayani Lakshmi Narasimhaiah and others^[1]. In this

cited decision, this Court reiterated the rule position and held that if once a notice is given at the stage of attachment under Order XXI Rule 54 (1-A) of the Code, it is not necessary to give further opportunity to the JDr under first proviso to order XXI Rule 66 (2) of the Code.

5. On the other hand, the learned counsel for the DHrs while supporting the order of the Court below had contended as follows: 'The JDr is contending that he is only having a share in the EP schedule properties, which are said to be his ancestral properties. Though his further contention is that there is no need to attach all the EP schedule properties and bring them to sale and that if one of the properties is attached and sold, such sale proceeds would be sufficient for realisation of the decree debt, he did not state as to which property among the six items of the EP schedule property may be attached and sold. Further, even according to his own showing he is not the full or absolute owner of all the six items of the EP schedule properties. He did not state as to what is his share in each of the six items of that EP schedule and who, along with him, are the other sharers. The Court below has not foreclosed the right of the JDr and had categorically stated in the orders that the JDr is at liberty to plead at the time of proclamation of sale as to which one or more of the EP schedule properties would be sufficient for sale and realisation of the decree debt. Therefore, there is no infirmity in the order impugned calling for interference.'

6. I have bestowed my attention to the facts and given anxious consideration to the submissions. I have carefully gone through the provisions of law, which are referred to in the submissions of the learned counsel for the JDr.

7. Before proceeding further, it is profitable to refer to the decision of the Supreme Court in *M/s. Mahakal Automobiles & another v. Kishan Swaroop Sharma* wherein the Supreme Court had laid down that when a

property is put up for auction to satisfy a decree of the Court, it is mandatory for the Court executing the decree, to comply with the following stages before a property is sold in execution of a particular decree: (a) Attachment of the Immovable Property; (b) Proclamation of Sale by Public Auction; and, (c) Sale by Public Auction. A reading of the provisions keeping in view the ratios in the precedents would make it clear that when once a notice is given to the JDr at the stage of attachment under Order XXI Rule 54 (1-A) of the Code, it is not necessary to give further notice to the JDr under Rule 66 unless the Court otherwise directs, as per the first proviso to Order XXI Rule 66(2) of the Code. Therefore, whether a notice shall be given at that later stage depends upon the discretion of the Court. When once the JDr is put on notice at the earlier stage, no further notice is contemplated under law as he is obliged to follow and participate in the proceedings and avail the opportunities at various stages provided under law to raise his objections to the execution of the decree. Be it noted that in the orders impugned, the Court of execution has given the option to the JDr to raise the self same objections at the time of proclamation of sale and, therefore, the Court below has not foreclosed the right of the JDr to raise the appropriate and necessary objections, which the law permits, at a later stage of the execution proceedings. Be it noted that the DHrs sought attachment of six items of properties in the execution proceedings by mentioning the values of the properties individually; the total value of all the properties works out to Rs.5,00,000/- as per the EP schedule. The amount due under the EP is Rs.4,85,681/- besides subsequent interest and costs of execution. It is not the contention of the JDr that he is the absolute owner of the said properties. Though his contention is that the DHrs had shown low values of the properties, he did not produce, at the time of hearing before the Court of execution, the valuation certificates of the individual properties shown in the EP schedule. His further contention is that he is only having a share in the

properties, the same being his ancestral properties. He did not also mention as to how many sharers are there and what is his specific share in each of the properties. In all fairness, if he wanted the Court to accept his contentions, he ought to have filed valuation certificates of the properties issued by a competent authority and ought to have mentioned his specific share in the properties sought to be attached and ought to have specified as to which property among the six items of the property, if attached and sold, would be sufficient to meet the decree debt. Therefore, he did not act diligently and did not plead the necessary details in his counter and also did not produce sufficient evidence before the Court below to substantiate his contentions. Unless the JDr comes with a specific case as to what are the values of the properties and what is his specific share in the EP schedule properties, it is not possible to accept his contentions. The JDr who had failed to plead the necessary details and produce or adduce the required standard of evidence, cannot be heard to say that the order impugned is unsustainable under facts and in law. Therefore, in the well considered view of this Court, particularly in view of the observations in the orders which are impugned and for the reasons assigned, this Court finds that there is no merit in the revision petition calling for interference with the order impugned.

8. In the result, the Civil Revision Petition is dismissed. However, it is made clear that the JDr is at liberty to raise all the available pleas, which the law permits, at every available appropriate later stage of the Execution Proceedings. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

09.03.2016

Note: Issue CC in one (01) week.

(B/o)
Vjl

[\[1\]](#) 2000 (2) ALD 269