

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5698 of 2011

ORDER :

Heard the learned counsel for the revision petitioner/ Decree Holder, impugning the order dated 09.11.2011 passed by the learned Principal Junior Civil Judge, Nandigama of Kirshna District, dismissing the E.P.No.105 of 2009 filed for execution of the decree for recovery of money passed in O.S.No.218 of 1993 on 29.11.1997 in favour of the plaintiff/ Decree Holder for recovery of Rs.15,000/- with interest at 6%p.a. on Rs.12,000/- from the date of suit i.e., 15.10.1997 to 01.08.2009 and costs of Rs.2,938/- and execution costs. The suit decreed is against both the defendants, who are the E.P. J.Drs. 1 and 2 before the lower Court. Among the two J.Drs., no other than mother and son, J.Dr.No.1/ mother died pending E.P. and the son is representing the estate of the deceased. No doubt, daughter of J.Dr.No.1 also added as J.Dr.No.3 before the lower Court in the E.P. as per the orders in I.A/ E.A.No.460 of 2009 dated 26.03.2010. The D.Hr. in the E.P. sought for recovery of the amount by attachment of the property of J.Dr.No.2 or J.Dr.No.1, as the case may be, jointly, but, J.Dr.No.2 remained ex parte in the E.P. and J.Dr.No.3, one of

the two legal representatives of late J.Dr.No.1 filed counter opposing the execution showing J.Dr.No.2 personally liable as per the decree, who got other movable and immovable personal properties and if at all, to attach those properties and not the property in question. It is not even the contest of it is the personal property of J.Dr.No.3. What all she claims at one breath as joint property succeeded from J.Dr.No.1 and at the other breath, as if the property cannot be attached. The Executing Court did not advert to it, in dismissal of E.P. from the observations, particularly, at paras 7 and 8, which reads as follows:

“7. The contention of the petitioner is that he is the managing partner of DHR and the court passed a decree in favour of DHR in OS 218/ 93 on 29.11.97 against the JDRs 1 and 2 and since JDR No.1 died JDR No.3 who is the daughter of 1<sup>st</sup> JDR is brought on record as legal representative of 1<sup>st</sup> JDR and the JDRs are owners of EP schedule property and though they are getting huge amounts from the EP schedule property they are intentionally neglecting to pay the decretal amount. The contention of the 3<sup>rd</sup> JDR is that the 2<sup>nd</sup> JDR has joint and several liability to discharge the decree debt along with deceased JDR and the 2<sup>nd</sup> JDR has movable and immovable properties and the 3<sup>rd</sup> JDR did not get any estate from the deceased JDR.

8. The DHR has got attached the EP schedule property on 30.08.10 and the same is effected. Except the extent of land and survey number and village boundaries mentioned in EP schedule there are no other particulars with regard to the ownership, title, right and possession of the land and to whom the EP schedule land belongs to. In the absence of the

ownership of EP schedule land it is not possible to proceed against that land. The petitioner has not filed any proof of document before the court to show that the EP schedule land belongs to the deceased JDR and after his demise the said estate came into the hands of 2<sup>nd</sup> and 3<sup>rd</sup> JDR's. There is no iota of evidence adduced by the DHR to show that the EP schedule land belongs to the deceased JDR and after his death it came to the hands of JDR's 2 and 3."

It clearly reflects from para-7 last lines of the impugned order that the contention of J.Dr.No.3 is that J.Dr.No.2 has got joint liability in discharge of the debt with deceased J.Dr.No.1 and he got other properties and J.Dr.No.3 did not get any estate from the deceased J.Dr.No.1. What the Executing Court stated is for the E.P. schedule property ownership, title or right, possession of J.Dr.No.1 or J.Dr.No.2 not filed. The lower Court ignored the fact that in the counter of J.Dr.No.3, it is not her claim that it is her property. The D.Hr. contests that it is the property of J.Dr.No.2 and standing in his name including in the revenue records, leave about if at all even succeeded from J.Dr.No.1 any portion, the estate of J.Dr.No.1 also liable including from the wording of Section 52 C.P.C. Once the estate of the deceased J.Dr. succeeded by the other J.Drs., the D.Hr. is entitled to proceed against the defendants to the decree including the deceased defendant's property in the hands of the legal representatives or other J.Drs. besides the personal

property of the survived defendants/ Jdrs. so to decide. Thus, the dismissal order of the lower Court is liable to be set aside.

Accordingly, the Civil Revision petition is allowed, by setting aside the dismissal order dated 09.11.2011 in E.P.No.105 of 2009 in O.S.No.218 of 1993 passed by the learned Principal Junior Civil Judge, Nandigama of Krishna District, by restoring the E.P. to its file with a direction to decide afresh as though there is no doctrine of pious obligation, after the Hindu Succession Amended Act 38 of 2005. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Date:31-10-2017  
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Dr. B. SIVA SANKARA RAO, J

