

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.4260 of 2017**

**ORDER:**

This revision petition is filed under Section 115 of Civil Procedure Code assailing the orders dated 26.07.2017 in E.P.No.81 of 2017 in O.S.No.198 of 2007 on the file of the Sub-divisional Magistrate & Special Assistant Agent (Mobile Court), Bhadrachalam.

2. Learned counsel for the petitioner submitted that the Executing Court passed the impugned order without impleading the petitioner either in the suit or in E.P. Learned counsel for the respondent submitted that the petitioner being a son of Bathula Venkatesh is bound by the decree passed by the Court.

3. A perusal of the record reveals that the respondent filed O.S.No.198 of 2007 on the file of the Sub-divisional Magistrate & Special Assistant Agent (Mobile Court), Bhadrachalam, against the father of the petitioner by name Bathula Venkatesh. During pendency of the suit, the said Bathula Venkatesh died. It appears, the Court issued summons to the petitioner herein and his mother. The trial Court decreed the suit on 22.06.2017. The respondent filed E.P.No.81 of 2017 in O.S.No.198 of 2007. The trial Court issued a warrant on 26.07.2017 attaching the salary of the

petitioner. The trial Court decreed the suit on 22.06.2017, whereas the E.P. order was passed on 26.07.2017.

4. A perusal of the record reveals that the petitioner herein was not shown as one of the defendants in O.S.No.198 of 2007. In the Execution Petition also, the father of the petitioner is shown as respondent being represented by the petitioner. Admittedly, no notice was given to the petitioner. As observed earlier, the petitioner is not a party in the main suit. This Court is unable to understand how the trial Court passed the order against the petitioner, who is not a party to the suit or execution proceedings. The order passed by the Court below is not sustainable either on facts or in law. If the order of the Court below is allowed to stand, certainly it would amount to miscarriage of justice.

5. Taking into consideration the facts and circumstances of the case, the Civil Revision Petition is allowed setting aside the order dated 26.07.2017 passed in E.P.No.81 of 2017 in O.S.No.198 of 2007 on the file of the Sub-divisional Magistrate & Special Assistant Agent(Mobile Court) Bhadrachalam. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

**T.SUNIL CHOWDARY, J**

**3<sup>rd</sup> November, 2017**

Rns

