

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2301 of 2017

ORDER :

Heard both sides at length.

2. It is the fundamental principle of law that Executing Court cannot go beyond the decree, unless there is inherent lack of jurisdiction to the very competency of the Court passed the decree and the issue before the Court is not even such to go into the executability. The issue in this regard is that Kovvuri Nagi Reddy, no other than the brother of Kovvuri Dharma Raju (late), known as Senior Dharma Raju, whereas the suit O.S.No.389 of 2009 for recovery of money was filed against Padala Srinivasareddy-sole defendant by K.Dharama Raju S/o.Ramachandra Reddy (Junior Dharma Raju), as if he is the sole legal heir of deceased Dharmaraju supra. In fact, in another round of litigation which went up to Supreme Court in a partition suit covered by S.L.P.No.13818 of 2010 (Civil) confirming the findings in the A.S.M.P.Nos.20377 of 2000, 24115, 24116, 1737 and 1738 of 2001 and 23385 of 2000 of several claims as if legatees of late Dharma Raju (senior) negated of the three un-registered Wills and found that K. Nagi Reddy, brother of late senior Dharma Raju supra, is the only Class-II legal heir of Dharma Raju (senior) died pending disposal of A.S.No.2251 of 1986 and Cross-Objection (S.R.).No.10150 of 1988 decree and judgment of this Court and the Supreme Court also dismissed the Review Petition No.1442 of

2010 (Civil). Having regard to the above, the claim of the revision petitioner who went unsuccessful in maintaining E.A.No.14 of 2010 before the Junior Civil Judge, Anaparthi of East Godavari District, is that the decree-holder/plaintiff in O.S.No.389 of 2009 by name Dharma Raju (junior) cannot maintain suit and obtain decree against P.Srinivasareddy-the defendant as legal heir of late Dharma Raju (senior), but for the petitioner-Nagi Reddy and the E.P.No.101 of 2009 filed by Dharma Raju (junior) against P.Srinivasareddy is unexecutable, but for to execute by him and to pass an order to that effect by declaring him as class-II legal heir of late Dharma Raju (senior). That E.A.No.14 of 2010 while pending Nagi Reddy died and his son Venkata Reddy came on record as 2nd petitioner. In fact, as referred supra, there is no inherent lack of jurisdiction to the Court, the said Nagi Reddy much less his son Venkata Reddy were not even parties to the decree. If at all, the said Nagi Reddy or his son Venkata Reddy to claim as legal heirs of late Dharma Raju (senior) for the suit claim is the available efficacious remedy of filing a third party appeal showing as parties-respondents the plaintiff/decreed-holder and defendant/judgment-debtor of E.P.No.101 of 2009 in execution of the decree in O.S.No.389 of 2009 and not to maintain a claim petition covered by E.A.No.14 of 2011.

3. Having regard to the above and from these observations, leave about the earlier finding is binding and how far as relevant under Section 13 of the Evidence Act is a matter in such third party appeal

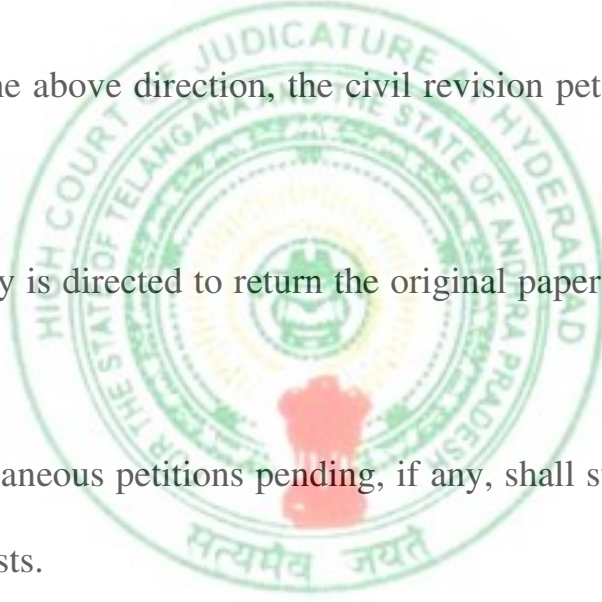
to consider, the revision can be disposed of for nothing to interfere with the order of the lower Court, but for clarifying none of the observations of the lower Court in dismissing E.A.No.14 of 2010 shall prejudice the rights of the petitioners to maintain a third party appeal by seeking leave before appropriate Court of law.

4. Having regard to the above, there shall be suspension of the execution proceedings of E.P.No.101 of 2009 for a period of one month from today.

5. With the above direction, the civil revision petition is disposed of.

6. Registry is directed to return the original papers by substitution of copies.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.



Dr. B. SIVA SANKARA RAO, J

15th November 2017.

Note:

Issue C.C. by 17.11.2017.

(b/o)
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