

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4282 of 2017

ORDER :

This Revision is filed assailing the order dt.17.08.2017 in E.P.No.73 of 2006 in O.S.No.59 of 1980 on the file of the Senior Civil Judge, Narsapuram.

2. The petitioner is Judgment-Debtor in the above suit.
3. The said suit was filed by the 1st respondent during his lifetime for recovery of possession. It was decreed on 22.10.1987. This decree was challenged by the Judgment-Debtor in A.S.No.35 of 1988 before this Court. The said appeal was dismissed on 02.01.1988. The Judgment-Debtor then preferred L.P.A.No.80 of 1998 against the said Decree and Judgment. The said L.P.A. was also dismissed on 06.07.2006.
4. Thereafter, the 1st respondent filed E.P.No.73 of 2006 for delivery of the E.P. Schedule Property. During the pendency of the said E.P.No.73 of 2006, the Judgment-Debtor delivered eastern portion of the property within the boundaries mentioned in the E.P. Schedule property and delivery was also recorded. The E.P. continued to be pending in respect of delivery of possession of the western portion of the E.P. Schedule property. In the meantime, the 1st respondent died leaving behind his wife, two daughters and the 2nd respondent herein.

5. Alleging that the 1st respondent had executed a Will dt.16.07.2012 in his favour, the 2nd respondent filed E.A.No.23 of 2014 to come on record in place of the deceased-1st respondent claiming to be the only legal heir of the deceased-Decree Holder.

6. No counter-affidavit was filed by the petitioner to the said application. So, E.A.No.23 of 2014 was ordered on 03.03.2014.

7. Thereafter, E.A.No.238 of 2014 was filed by certain third parties to bring on record the wife, two daughters as well as the 2nd respondent as legal heirs of the deceased-Decree Holder in the claim Petition E.A.No.292 of 2007 filed by them. In that E.A.No.292 of 2007, the son and the two daughters of the Decree Holder filed affidavits stating that the deceased-Decree Holder executed a Will in favour of the 2nd respondent / son and he alone is the legal representative of the decree holder, and the others need not be brought on record. In that application also, the petitioner reported no objection and did not file any counter. A detailed order was passed in E.A.No.238 of 2014.

8. However, the counsel for the claim petitioners having contended that the Will was required to be proved, left it to the discretion of the Court in view of the fact that the other legal representatives filed affidavits stating that the 2nd respondent alone may be brought on record as the legal representative of the deceased-Decree Holder / 1st respondent. The Court then passed order on

08.12.2015 in E.A.No.238 of 2014 allowing the 2nd respondent to come on record as the legal representative of the deceased-1st respondent and observed that if there is any dispute in future regarding the Will, the same is left open to be decided at the appropriate stage. Subsequently, the claim petition E.A.No.292 of 2007 was dismissed on 01.06.2017 by a detailed order on merits.

9. Thereafter, E.A.No.73 of 2006 was taken up by the Court below. At that time, a contention was raised by the Judgment-Debtor that the Will which was claimed to have been executed by the deceased-Decree Holder / 1st respondent in favour of 2nd respondent is required to be proved in view of the observation made on 08.12.2015 in E.A.No.238 of 2014. It was further contended that the affidavits filed by the other family members of the deceased / 1st respondent that the deceased / 1st respondent did execute a Will in favour of the 2nd respondent are forged.

10. By order dt.17.08.2017, these objections were rejected by the Court below holding that both in E.A.No.238 of 2014 and E.A.No.23 of 2014 the petitioners had not filed a counter; observations in E.A.No.238 of 2014 cannot help the petitioners since the observation therein was only so far as the claim petition E.A.No.292 of 2007, and it came to be dismissed later; and that E.A.No.23 of 2014 was allowed on 03.03.2014 and the 2nd respondent was brought on record as legal representative of the deceased 1st respondent in the E.P. and 3 years 4 months later, the petitioners are now contending that the Will is

required to be proved and E.P. should be dismissed for want of proof of Will. It, therefore, directed issuance of delivery warrant in the E.P.

11. Assailing the same, the present Civil Revision Petition is filed.

12. The counsel for petitioner contended that the Will set up by the 2nd respondent has not been proved at all; that the 2nd respondent therefore could not have pursued the execution petition, and the court below was not correct in rejecting petitioner's objection to the continuation of the E.P. by the 2nd respondent.

13. I am unable to agree with the said contention.

14. Admittedly, the other family members of the 2nd respondent had filed affidavits in the Court stating that the Will is genuine and that the 2nd respondent is the successor to the estate of the 1st respondent / Decree Holder on the basis of the said Will. If anybody could have raised an objection about the said Will, it was the family members of respondent nos.1 and 2. When they did not raise any objection, it is not for a third-party, that too a Judgment-Debtor, to resist execution on the plea that the Will set up by the 2nd respondent requires to be proved in accordance with law. It is not as if the Judgment-Debtors are in any way related to the deceased-Decree Holder, and that they have any claim as his legal heirs. When the petitioners had an opportunity to oppose the coming on record of the 2nd respondent as legal representative of the deceased-1st respondent Decree Holder,

admittedly they did not file any counter and oppose it. So they are deemed to have waived any objection to his coming on record.

15. In this view of the matter, I am of the opinion that the Court below did not commit any error of jurisdiction in rejecting petitioners' objections and in directing delivery of the property to the 2nd respondent.

16. Accordingly, the Civil Revision Petition is dismissed.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-08-2017

Ndr/*

