

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.908 of 2017

ORDER :

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code challenging the order dt.22.12.2016 in E.A.No.74 of 2013 in E.P.No.93 of 2008 in O.S.No.116 of 2006 on the file of Senior Civil Judge, Bhimavaram.

2. The Revision petitioner herein is the Judgment-Debtor.
3. The 1st respondent filed the said suit for recovery of money on the basis of a mortgage against the petitioner, and the suit was decreed; and a preliminary decree was passed on 24.10.2016.
4. Thereafter, final decree was passed on 23.07.2007.
5. Thereafter, E.P.No.93 of 2008 was filed for execution of the said decree by putting the mortgaged property to sale to recover a sum of Rs.3,59,827/-.
6. After filing of the execution petition, the Decree-Holder died on 28.07.2012, and her son (the 2nd petitioner) filed E.A.No.74 of 2013 to implead him as 2nd petitioner in the E.P.; and to carry out consequential amendments, placing reliance on a Will dt.25.06.2012 executed by his mother in his favour.

7. The petitioner then filed a counter stating that the 1st respondent did not execute the Will in favour of 2nd respondent and that the Will is forged and fabricated. It was also stated that other legal representatives are there who also needed to be impleaded.

8. The respondents examined two witnesses and marked Exs.A.1 and A.2, and the petitioner examined herself as RW.1

9. On consideration of the evidence of record, the Court below held that under Section 68 of the Evidence Act a Will is required to be attested by at least one attester; that PW.2, one of the attestors, had been examined by the respondent, and therefore, the Will is proved; that there is no evidence produced by petitioner to show that the signatures on Ex.A.1-Will do not belong to 1st respondent; that nobody else came forward claiming the right in respect of the decree; and therefore, the 2nd respondent is entitled to be impleaded as legal representative of the deceased-1st respondent.

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

11. The counsel for petitioner contended that the other legal heirs of the deceased 1st respondent also ought to have been impleaded. This contention is without merit because the 2nd respondent is claiming through a Will dt.25.06.2012 which has been found to be valid by the Court below. That apart, the petitioner is not disputing that the 2nd respondent is the son of deceased-1st respondent Decree-Holder. So even if the Will is not proved, since the 2nd respondent is also a legal

representative of the deceased-1st respondent; and since there is no question of abatement after decree, more so, when the estate of the deceased represented through one of the legal heirs, I am of the opinion that the Court below did not commit any error of jurisdiction in allowing E.A.No.74 of 2013.

12. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-02-2017

Ndr/*

