

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.3445 OF 2016

ORDER:

Judgment debtor in EP. No.327 of 2013 in O.S No.443 of 2003 in the Court of Principal Junior Civil Judge, Kurnool, is the revision petitioner.

The revision petitioner filed EA. No.166 of 2015 under Section 47 of Civil Procedure Code praying to dismiss EP. No.327 of 2013. The Executing Court through order impugned in the revision has rejected the prayer. Hence, the revision.

The respondent filed EP. No.327 of 2013 to execute the decree in O.S No.443 of 2003. The decree reads as follows:

- “1. that the defendant do pay to the plaintiff a sum of Rs.18,500/- without future interest.
2. that the defendant do pay to the plaintiff a sum of Rs.3483-00 being the costs of the suit.”

The counsel appearing for petitioner contends that once the very ownership of D.Hr is an issue, not established, further the judgment debtor can satisfactorily show that D.Hr is not the owner, then there is no decree for execution or for recovery of money. Therefore, the petition is maintainable.

On the other hand, learned counsel for respondent contends that this objection, on the principle of *res-judicata*, is not available to the petitioner to raise again and he places strong reliance on the findings recorded by the trial Court in common judgment dated 30.12.2005 as well by the appellate Court in judgment dated 14.03.2011 in A.S No.27 of 2007. Therefore, the answer to the

question that was canvassed in CRP depends on the findings recorded by the trial Court and the appellate Court in this behalf.

The revision petitioner filed A.S. No.27 of 2007 against the decree and judgment in O.S. No.443 of 2003. On 14.03.2011 A.S.No.27 of 2007 was dismissed. The reason for referring to the outcome of O.S. No.443 of 2003 and A.S. No.27 of 2007 is that the revision petitioner having been unsuccessful in his defence on the same issue, now raises the very same objection in the affidavit filed along with this EA. Whether the petitioner can be permitted to raise objections against the execution of decree in O.S. No.443 of 2003 on the ground that the D.Hr is not the owner, for which rent is directed to be paid is available or not, is the primary point for consideration. I do not propose to reproduce the findings recorded by the trial Court as well as the appellate Court in the suit referred to above. *Prima facie* this Court is of the view that in the common judgment, on the ownership of suit schedule property, the case of parties is considered and rejected. Once findings are recorded by the trial Court against the petitioner and money decree is passed, the objection on the ownership of property for which rent is directed to be paid cannot and could not be entertained at this stage of the matter. The respondent is executing a money decree passed in his favour. The objections now raised cannot be considered and decided under Section 47 of the Civil Procedure Code. After perusing the order impugned in the revision and also the judgment and decree in O.S. No.443 of 2003 and A.S.No.27 of 2007, I am satisfied that the petition lacks *bona fides* and the executing Court has rightly dismissed the EA. Having perused the

dates and delay occasioned in the EP., EP. No. 327 of 2013 is directed to be disposed of in four weeks from the date of receipt of a copy of this order. The C.R.P. is dismissed with the above observation. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date: 17.03.2017
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