

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6171 of 2016

ORDER:

The present civil revision petition is filed questioning the order dated 29.09.2016, passed in E.A.No.85 of 2016 in E.P.No.8 of 2012, wherein the application filed by the third judgment debtor to reopen the E.P. for adducing evidence in respect of the suit for specific performance of agreement of sale was rejected.

2. The facts in issue disclose that respondents herein filed O.S.No.133 of 2011 for specific performance of agreement of sale dated 10.02.2011, executed by first defendant in respect of house property bearing D.No.222 admeasuring 216.98 square yards situated in 7th Municipal Ward, Mitta Street, Tirupati. By its judgment dated 02.06.2012, the trial Court decreed the suit with costs directing the first defendant to execute regular registered sale deed in favour of the plaintiff. It has further directed that if the first defendant fails to execute sale deed on or before 02.07.2012, the plaintiff was given liberty to obtain registered sale deed through Court. Thereafter, an Execution Petition came to be filed seeking a direction to judgment debtor No.1 to register sale deed with reference to the draft sale deed filed along with the Execution Petition. A counter came to be filed to the said Execution Petition, disputing the averments made in the affidavit filed in support of the Execution Petition. It is stated that since the judgment debtor Nos. 1 and 2 were looking after the family

affairs and the properties, judgment debtor No.3 has no knowledge of the alleged transaction between the decree holder and judgment debtors 1 and 2 and as such she was not able to take any legal steps to protest their acts and also to protect her right in the E.P. schedule property. Pending the said E.P., E.A.No.85 of 2016 came to be filed seeking to reopen the above E.P. on respondent side for enquiry on behalf of judgment debtor No.3 and to adduce evidence on her side. After considering the affidavit and counter filed, the trial Court dismissed the said E.A. holding that the request of the petitioner for adducing evidence in E.P. does not arise and that the said application is made only with a view to drag on the proceedings. Aggrieved thereby, the present C.R.P. came to be filed.

Order 21 Rule 34 of C.P.C. reads as under:

“Decree for execution of document, or endorsement of negotiable instrument:

(1) where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document of endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the judge or such officer as may be appointed in this behalf shall execute the document so delivered”.

3. From the above, it is clear that the judgment debtor has the opportunity to file his objections. Even in the instant case, as stated above, judgment debtor No.3 has filed his counter in the said E.A. and hence the question of giving an opportunity to adduce further evidence would not arise at this stage. The said fact is not seriously disputed by the learned counsel for the petitioner. But, however, he pleads that an opportunity may be given for adducing the same.

4. Having regard to the above circumstances, I see no ground to interfere with the order passed by the Court below. However, if draft sale deed is filed by decree holder, the petitioner herein may be given an opportunity to file his objections.

5. Accordingly, the C.R.P. is disposed of. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.03.2017
vhh