

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.4535 OF 2017

ORDER:

Judgment Debtor No.3 in E.P.No.41 of 2016 in O.S.No.16 of 2014 on the file of the Court of the Senior Civil Judge, Allagadda is the petitioner in the present revision.

2. Heard Sri Challa Siva Sankar, learned counsel for the petitioner/JDR No.3, and Smt A.Harija, learned counsel for respondent No.1/DHR, apart from perusing the material available before this Court.

3. On the ground that the petitioner's father borrowed amount from her on the foot of a promissory note, respondent No.1 herein instituted the above mentioned suit for recovery of amount. The learned Senior Civil Judge, Allagadda decreed the said suit on 05.01.2016, directing defendant Nos.1 to 4 to pay a sum of Rs.1,20,120/- from the estate of late Sri Gaddam Ravi with interest at the rate of 12% per annum from the date of filing of the suit till the date of decree and thereafter, at the rate of 6% per annum on the suit amount of Rs.78,000/-. For enforcement of the said decree, the DHR/respondent No.1 herein filed E.P.No.41 of 2016 in O.S.No.16 of 2014 by way of attachment of salary of JDR No.3 under Order XXI Rule 48 of the Code of Civil Procedure, 1908. Along with the said Execution Petition, respondent No.1/DHR filed an affidavit stating that JDR No.3/petitioner herein is working as Attender in S.V. Degree College at Chagalamarri and he got the said job on compassionate grounds in the place of his deceased father. The said execution petition was contested by JDR

No.3/petitioner herein by way of filing a counter, taking a preliminary objection as to the maintainability of the execution petition. In the said counter, the petitioner herein stated that DHR cannot go beyond the decree passed by the original Court. The learned Senior Civil Judge, by way of an order, dated 27.07.2017, allowed the execution petition filed by respondent No.1 herein, ordering issuance of order of attachment of salary of the petitioner herein under Order XXI Rule 48 C.P.C. subject to Section 60 C.P.C.

4. According to the learned counsel for JDR No.3/petitioner herein, the questioned order is highly erroneous, contrary to law and travels beyond the decree, which is impermissible. It is further submitted by the learned counsel that the decree passed in the suit permitted only recovery of amount from the estate of the deceased father of the petitioner, late Sri Gaddam Ravi, and the decree does not enable respondent No.1 to seek recovery from the salary of the petitioner, which is his own earnings.

5. On the contrary, it is submitted by learned counsel for the DHR/respondent No.1 herein that it is the moral and legal obligation on the part of the petitioner herein to pay the amount borrowed by his father and having secured the job on compassionate grounds in the place of his deceased father, it is not open for the petitioner to go back from the responsibility of paying the amount.

6. In the above backdrop, the issue that calls for consideration in the present revision is:

“Whether the order passed by the learned Senior Civil Judge is in accordance with the provisions of law or whether the same warrants any interference of this Court?”

7. It is not in controversy that the suit, O.S.No.16 of 2014, instituted by respondent No.1/DHR for recovery of amount on the foot of a promissory note was decreed by the Court of the Senior Civil Judge, Allagadda, jointly and severally against all the defendants including the petitioner herein, directing payment of Rs.1,20,120/- with interest at 12% per annum and with future interest at 6% per annum. It is very much evident from a reading of the judgment and decree rendered by the learned Senior Civil Judge, Allagadda that the learned Judge directed the payment of the amount covered by the promissory note from the estate of late Sri Gaddam Ravi. The preliminary objection in the instant case, raised by the learned counsel for the petitioner, is that absolutely no evidence is placed on record by the DHR to show that despite succeeding to the estate of the deceased, the petitioner is not paying the amount under the decree. In fact, in the affidavit filed along with the execution petition, as stated supra, the DHR pleaded that JDR No.3/petitioner herein got the job on compassionate grounds in the place of his deceased father. In elaboration of the said averment, it is contended by the learned counsel for the DHR/respondent No.1 herein that having secured the said job on compassionate grounds, JDR No.3 is legally and morally liable to pay the amount.

8. It is to be noted that in specific terms, the decree directed recovery of amount only from the estate of the deceased. No

evidence is placed on record by the DHR to show that the petitioner herein has succeeded to any property of the deceased late Sri Gaddam Ravi and no particulars are forthcoming from the record available. By any stretch of imagination, the job secured by the petitioner herein cannot be construed as an estate of the deceased. Therefore, in the absence of any material to show that the JDRs succeeded to the estate of the deceased, the present execution petition for recovery of the amount from the salary of the petitioner herein is not maintainable. However, it is open for the DHR to show the existence of the estate of the deceased in the hands of the JDRs and to proceed in accordance with law by filing a separate Execution Petition.

9. With the above observations, the Civil Revision Petition is allowed, setting aside the order, dated 27.07.2017, in E.P.No.41 of 2016 in O.S.No.16 of 2014 on the file of the Court of the Senior Civil Judge, Allagadda. There shall be no order as to costs.

10. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 18.12.2017
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



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AMD