

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

C.R.P.Nos.2487 and 2509 of 2010

COMMON ORDER

Since the issue involved in both these revisions is one and the same, they are being taken up for disposal by this common order.

2. The revisions petitioners, who are father and son, filed suits being O.S.No.170 and 169 of 2003, respectively, against the respondent for recovery of money and obtained decrees in their favour. Subsequently, they filed E.P.Nos.44 and 43 of 2008 for realization of decretal amount by the respondent/J.Dr., and for attachment of EP schedule property comprising the land to an extent of Ac.0.80 cents in R.S.No.127/1 situated in Choragudi village, Pamidimukkala Mandal, Krishna District, respectively. The said E.Ps., were contested by the respondent/J.Dr., contending that he has no property whatsoever and himself and his aged mother are depending upon others since he has no means to eke out his livelihood and hence, he prays to dismiss the EPs. By the orders impugned, the executing Court held that the decree-holders failed to produce satisfactory evidence to show that the property devolved upon the J.Dr., was in his exclusive possession and dismissed the said EPs. Aggrieved by the same, the present revisions are filed.

3. Heard learned counsel for petitioners/D.Hrs., and learned counsel for respondent/J.Dr., and perused the material on record.

4. There is no controversy with regard to filing of the suits for recovery of money and obtaining decrees by the revision petitioners against the respondent. The material on record would show that during pendency of the suits, the property, which is now sought to be auctioned, was attached before judgment. The suit schedule property was originally belonged to the father of the J.Dr., by name, Tata Krishnaiah, who died in the year 1980, leaving behind the J.Dr., and his elder brother Tata Veera Raghavaiah and ever since, the J.Dr., and his brother were in possession of the land to an extent of Acs.1.61 cents in equal shares. The decree-holders have produced a registration extract of the land in R.S.No.127/1 evidencing the fact that the land belongs to the father of J.Dr. and they also filed encumbrance certificate certifying that from 03.01.1974 to 10.03.2010 there was no encumbrance on the said property. However, the executing Court having held that there was no clinching evidence to show that the property that was attached and now sought to be auctioned belongs to J.Dr., dismissed the E.Ps filed by petitioners.

5. Learned counsel for petitioners/D.Hrs., submits that the decree-holders have produced the documents available with them and they can produce further documents to show that the property that was attached before judgment is exclusively belongs to J.Dr., till date and is liable to be auctioned in execution of decrees obtained by them. He also submits that during pendency of these revisions, this Court granted interim injunction restraining the respondent from alienating the schedule property.

6. In view of the submission of learned counsel for petitioners that the petitioners will produce further documents to prove that the EP schedule property exclusively belongs to J.Dr., and in view of the injunction granted by this Court, an opportunity may be given to the petitioners to put forth their contentions by producing appropriate documents. Therefore, the matter can be remanded to the executing Court for fresh adjudication so as to enable the petitioners to produce appropriate documents with regard to the schedule property.

7. Accordingly, both the Civil Revision Petitions are allowed, setting aside the orders impugned and the matters are remanded to the executing Court for disposal afresh. The parties are at liberty to produce the documents pertaining to the schedule property before the executing Court, within a period of two months from the date of receipt of a copy of this order. Thereafter, the executing Court shall dispose of the matters in accordance with law after considering the evidence that has to be produced by the parties and after affording an opportunity of hearing to both sides, within a period of three months. No order as to costs. Miscellaneous petitions, if any, pending in both the revisions shall stand closed.

19th June, 2017

sj

M.S.K.JAISWAL, J