

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.3254 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order, dated 10.03.2017, passed in E.A.No.29 of 2017 in E.A.No.67 of 2011 in E.P.No.30 of 2009 in O.S.No.38 of 2003 on the file of the Senior Civil Judge, Kothapeta, East Godavari District.

2. The petitioner/JDR filed the aforementioned application to reopen his side evidence and to summon the then Amin of the Court by name S.M.Ahmad as a Court witness regarding illegal attachment of the E.P. schedule properties. In the affidavit filed in support of the said application, he states that the attachment and sale of the E.P. schedule properties are illegal and collusive. The deceased 1st DHR did not attach the properties at all and the properties could not be attached in view of the wrong schedule given by the deceased 1st DHR. He took the pleas of illegality of attachment, irregularities of sale proceedings and unreasonable valuation of properties by the then Amin of Court in the earlier proceedings. It is further stated that he also adduced evidence to prove that there was no attachment of E.P. schedule properties through P.W.2 in E.A.No.67 of 2011. According to him, it is the burden of the DHR to prove that there was legal attachment and that sale proceedings were legally followed. However, respondent Nos.4 to 7 did not take any steps to examine the witness, who participated in attachment proceedings, to prove the correctness of schedule properties attached, market value of the properties

attached, publication of the auction and other aspects. It is further stated that he was advised to summon the then Amin of the Court on the date of alleged attachment by name S.M.Ahmad and to cross examine him to prove that the alleged attachment of E.P. schedule properties did not take place and even if it took place, it was illegal. To bring out the true facts, to meet the ends of justice and for just adjudication of the dispute before the Court, it is essential to reopen his side evidence to summon the said Amin as a Court witness.

3. A counter came to be filed by respondent No.3, which was adopted by respondent Nos.2 and 4 to 7.

4. Considering the rival submissions made, E.A.No.29 of 2017 came to be dismissed. Challenging the same, the present Civil Revision Petition is filed.

5. As seen from the record, it is represented by the petitioner that he is the J.D.R in E.P.No.30 of 2009. He filed E.A.No.67 of 2011 to set aside the sale held in E.P.No.30 of 2009 on the ground of illegal attachment, irregularities in sale proceedings and unreasonable valuation of the properties. He adduced evidence in E.A.No.67 of 2011, but the burden casts on the D.H.R. to prove that there was a legal attachment and sale proceedings were legally followed. Respondent Nos.4 to 7 did not take any steps to examine the witnesses, who participated in the auction proceedings, to prove the correctness of the schedule properties, market value of the attached properties and publication and other necessary aspects. Hence, he was advised to file the aforementioned application to summon S.M. Ahmad as a Court witness and permit

him to cross examine him about the attachment of E.P. schedule properties.

6. Learned counsel for respondent Nos.2 to 7 argued that previously, the petitioner/JDR filed an appeal in A.S.No.159 of 2009 on the file of the learned II Additional District Judge, Amalapuram and also moved a stay petition in execution of the decree and the learned Judge granted stay subject to condition of depositing half of the decree amount, but the JDR failed to deposit the decree amount and that later, the appeal was also disposed of on merits on 01.04.2013, confirming the lower Court judgment and decree.

7. The short question that arises for consideration is:

“Whether the petitioner is entitled to reopen his side evidence to summon the then Amin of the Court by name S.M. Ahmad and examine him as a Court witness?”

8. **POINT:-** It is to be noted that E.A.No.67 of 2011 was filed six years prior to filing E.A.No.29 of 2017. E.A.No.67 of 2011 was filed to set aside the sale held on 21.04.2011 by the Senior Civil Judge, Kothapeta in E.P.No.30 of 2009 on the ground that some irregularities were committed while conducting the sale. The impugned order indicates that from 2011 itself, several opportunities were given to the petitioner herein to adduce evidence. On 05.01.2016, the petitioner filed his chief affidavit. Subsequently, he filed a memo stating that compromise talks were going on and several adjournments were taken on that ground. On 13.06.2016, he appeared before the trial Court and was cross examined on that day. Later on, he again started taking several

adjournments for adducing further evidence. On 22.07.2016, his chief affidavit was filed and on request of the counsel, the said application was posted for cross examination to 27.07.2016 and then, to 03.08.2016. It is seen from the record that the matter was being adjourned from time to time and ultimately, the petitioner's evidence was closed and posted for respondents' evidence. On 13.02.2017, the evidence of respondents was closed and the matter was posted to 15.02.2017 for arguments. Since then, the petitioner is taking time on one pretext or the other. Though the impugned order was passed in the month of March, 2017, the petitioner moved the present Civil Revision Petition in the month of June, 2017.

9. Having regard to the facts and circumstances of the case and since the application came to be filed after the evidence was closed and more particularly, in view of the orders passed in A.S.No.159 of 2009 on the file of the learned II Additional District Judge, Amalapuram, this Court feels that the order under challenge needs no interference of this Court.

10. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

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

JUSTICE C.PRAVEEN KUMAR

Date: 10.11.2017
AMD

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR



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