

HONOURABLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.909 OF 2017

ORDER:

Heard Mr.K.V.Raghuveer, counsel for petitioner and Mr.C.Prakash Reddy, counsel for respondents.

The D.Hr. is the revision petitioner.

On 6-12-2007, learned Senior Civil Judge, Kurnool has decreed the suit in O.S.No.273 of 2007 as follows:

"This suit coming on 6-12-2007 for final hearing in the presence of Sri C.Satyanarayana, Advocate for the plaintiff and D-1 to D-3 having been called absent and remained set exparte and this court doth order and decree:

- 1. That the defendants do pay to the plaintiff a sum of Rs.2,24,933/- with interest at 6% P.A. from the date of the suit i.e., on 8-6-2007 till the date of realization; and*
- 2. That the defendants also pay to the plaintiff a sum of Rs.9,904-50 is being the costs of the suit."*

Revision petitioner filed E.P.No.508 of 2015 to execute the decree dated 6-12-2007.

The executing court through the order impugned in the revision dismissed the E.P.

One of the considerations weighed with the executing court reads thus:

"A perusal of the Decree in O.S.No.273 of 2007 shows that there is an error in the decretal portion. It is an error apparent on the face of the records, i.e., when the suit is filed seeking relief against the Estate of the deceased, a Personal decree was granted. So, it is clear that the relief, which was granted by the Court, was not at all sought by the petitioner/Decree Holder. It appears that at the time of preparing the Decree, the words 'from and out of the Estate of the Deceased Late K.Krishnaih' were not typed in the Decree, and it was prepared in a routine manner of passing of

Personal Decree, which is generally sought in Money Suits. It is nothing but a clerical or typographical error. It appears that the said mistake was not observed by the then Presiding Officer, or it was not even brought to the notice of the Court, even by the present petitioner/Decree Holder. Taking advantage of the relief granted by the Court, the petitioner/Decree Holder cannot contend that since the Decree was passed against the Respondent No.2 and 3/Judgment Debtors No.2 and 3 personally, he is entitled to execute the same."

The learned counsel appearing the parties admit that the respondents herein are not the borrowers under promissory notes dated 20-12-2003, 11-4-2004 and 8-1-2004 but are legal heirs of the principle borrowers. The decree ought to have been for realizing the amount payable under suit promissory notes from out of the estate that comes into the hands of the respondents herein.

Learned counsel admit that an application is filed by respondents herein for appropriate orders on the decree dated 6-12-2007.

Having regard to the objections pointed out by the executing court extracted supra and also the development now stated by the counsel Mr.Prakash Reddy requests the court to set aside the order impugned in the revision and remit the matter back to the executing court for consideration afresh after taking note of the out come of application filed by the respondents herein. The order impugned is set aside. E.P.restored to file and the Executing Court is directed to dispose of the E.P. after I.A. filed for amendment of decree is decided.

The C.R.P. is disposed of accordingly.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.V.BHATT

Dated 22-3-2017.

Note.

Registry is directed to communicate
the order forthwith.

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Dvs.



HONOURABLE SRI JUSTICE S.V.BHATT



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Dated 22-3-2017.

Dvs