

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**CIVIL REVISION PETITION No.5211 OF 2011****ORDER:**

The petitioners are the decree holders. The respondents 1 to 7 are the judgment debtors. E.P.No.188 of 2007 was filed by the decree holder on the file of the Additional Senior Civil Judge, Eluru, to execute for recovery of the costs decreed in the suit O.S.No.145 of 2005 for an amount of Rs.10,028/-. The relief sought in the execution petition from Para 11 and 12 is by arrest of the 3rd judgment debtor to recover the said amount mentioned in the execution petition.

2. In the course of enquiry regarding the means of the judgment debtor for arrest of the judgment debtor No.3 supra, before the executing court, the decree holder and said judgment debtor respectively examined as P.W.1 and R.W.1. There is no documentary evidence filed by either side. The lower court having discussed the said evidence particularly cross-examination evidence of P.W.1 saying to say in his chief-examination that the judgment debtor got landed property and income of about rupees one lakh from the property of about five acres besides RCC building, Tractor and got means besides movable property of gold and silver valuables and capacity to pay and evading, no documentary proof filed and even the judgment debtor in the

cross-examination of her disputed about his means by claiming as a labourer and he got the Acres 5.25 cents, however, he is not in possession because the testator of the will by name Goparaju given him vested remainder, by giving life interest possession to the testator's second wife and being a legatee, he is not in possession and enjoyment of the land though got a right and thereby, there are no means that could be established.

3. Suffice to say, the very cross-examination admission is enough, leave about the counter of the judgment debtor at Para 3 says, Goparaju wrote a registered will dated 25.06.1990 and Photostat copy also enclosed with the counter and not even denied the execution petition averments regarding his means from the said cross-examination. Once he got the right over the property being the vested remainder holder under the bequest of the will copy also filed that is suffice to say he got means and willfully avoiding within the meaning of Order 21 Rules 37 and 38 r/w Section 55 of CPC. Thus, the dismissal order of the execution petition by the lower court is unsustainable and liable to be set aside.

4. Accordingly and in the result, the revision is allowed setting aside the dismissal order by allowing the execution petition for arrest of the said judgment debtor for recovery of the amount, however, by virtue of this order, two months time

from today is granted to deposit the costs before the trial court, for the trial court to permit the decree holder to withdraw and if failed to pay within two months from today, the lower court can issue arrest warrant and secure the presence on payment of batta by the decree holder for recovery of amount.

5. Miscellaneous petitions pending consideration, if any, in this case shall stand closed as consequence. There shall be no order as to costs.

01.11.2017
SS

Dr.B.SIVA SANKARA RAO, J

