

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.7115 of 2017

ORDER

This petition under Article 227 of the Constitution of India is filed questioning the order dated 22.09.2017 passed in I.A.No.678 of 2017 in O.P.No.631 of 2012 by the VII Additional District Judge, Khammam, filed under Order 38 Rule 5 of CPC for attachment of suit schedule property, consisting of two items, before judgment.

2. The petitioner is a third party to the proceedings in O.P.No.631 of 2012. She filed the present revision before this Court on the ground that she is the owner and possessor of item No.2 of the suit schedule property and she has got title over the said property under sale deed dated 29.06.1990 and sought for setting aside the attachment of suit schedule property ordered by the Court below on 22.09.2017.

3. The Court below ordered attachment before judgment of item No.2 of the property shown in the schedule. The petitioner is claiming right over item No.2 of the suit schedule property i.e., two floored RCC building house bearing Municipal Corporation House No.6-4-485 along with its open place situated at T.V.Colony, MIG Phase 4, Vanasthalipuram, Rangareddy District, within the boundaries mentioned in the petition.

4. When the property of petitioner is attached, the remedy open to her is to file an application under Order 38 Rule 8 of CPC, which deals with adjudication of claim to property attached before judgment, where any claim is preferred to property attached before

judgment, such claim shall be adjudicated upon in the manner provided for the adjudication of claims to property attached in execution of a decree for the payment of money. Thus, it means, any claim to the property attached before judgment has to be enquired into like a petition under Order 21 Rule 58 of CPC or under Section 47 of CPC, and according to Order 21 Rule 58 of CPC, such claim has to be enquired into like a civil suit. Clauses (2) and (3) of Order 21 Rule 58 of CPC, read as under:

“(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination-

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.”

5. Thus, an enquiry is contemplated under Order 21 Rule 58 of CPC or under Order 38 Rule 8 of CPC. Therefore, this Court, while exercising power under Article 227 of the Constitution of India, cannot undertake such enquiry and decide the claim of the petitioner since it is a question of fact. Therefore, this petition under Article 227

of the Constitution of India, is not maintainable against such an order and the petitioner is at liberty to file an application under Order 38 Rule 8 of CPC to adjudicate her claim, and on filing such claim, the Court below is directed to decide the same after affording reasonable opportunity to both the parties. Hence, I find no ground to set aside the order impugned.

6. In the result, the Civil Revision Petition is dismissed, granting liberty to the petitioner to file an application under Order 38 Rule 8 of CPC or any other relevant provision. No order as to costs.

7. Miscellaneous petitions, if any, pending in this revision shall stand closed.

22nd December, 2017
sj

M. SATYANARAYANA MURTHY, J

