

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1474 OF 2018

ORDER:

The Civil Revision Petition under Section 115 C.P.C. challenging the order dated 17.11.2017 in E.P.No.317 of 2016 in MVOP No.13 of 2013 passed by the Principal District Judge, Mahabubnagar, whereby the petitioner/JDr.No.2 was ordered to be arrested for realization of the award amount in M.V.O.P.No.13 of 2013.

Respondents 1 to 5 filed MVOP and obtained award for Rs.7,75,000/- together with subsequent interest and costs and to realize the award amount, execution petition was filed for arrest of the petitioner stating that the petitioner is having sufficient means to satisfy the decree amount and intentionally avoiding to discharge the same. It appears from the record that the Court below ordered arrest of the petitioner/JDr and on his production after arrest before the Court, he executed bond in favour of the executing Court and thereafter, took up enquiry under Order XXI Rule 39 C.P.C. which is mandatory. During enquiry, PWs.1 and 2 were examined and marked Ex.A1 on behalf of the respondents 1 to 5 herein and on behalf of the petitioner, he himself examined as RW1 and no documents were marked.

Upon hearing argument of both counsel, considering oral and documentary evidence, the Court below passed impugned order to commit the petitioner to civil prison for realization of the decree amount holding that the petitioner possessed sufficient means to pay the decree amount.

The main contention raised in the petition before this Court is that the executing Court did not appreciate the evidence of PW.2 in proper perspective, who deposed about the means of the petitioner i.e. possessing Ac.3.30 guntas belonged to Jangamma, W/o Ramaswamy Goud. The name of his wife was mutated in the revenue records and wrongly placed initial onus of proof on the Judgment Debtor instead of Decree Holder. The executing Court also failed to record a specific finding as to the means of the Judgment Debtor and committed an error in allowing the petition.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition, but advanced his argument that the Court

below did not record findings that the petitioner intentionally avoiding to pay the decree amount with dishonest intention and in the absence of such finding, the impugned order is unsustainable and requested to set aside the execution petition.

As the revision is filed under Section 115 C.P.C., the jurisdiction of this Court is limited and this Court can exercise such power only in three limited circumstances enumerated thereunder. According to Section 115 C.P.C., the High Court may call for record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears. (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit. Sub-Section (2) made it clear that the High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

The undisputed fact is that the petitioner is the Judgment Debtor No.2 and respondents 1 to 5 are the Decree Holders and they filed petition for realization of the award amount resorting to Order XXI Rules 37 and 38 C.P.C. for arrest of the petitioner and commit him to civil prison. Along with the execution, the Decree Holder filed affidavit specifically contending that the petitioner has got sufficient means to satisfy the award amount and intentionally avoiding to pay the award amount to harass the Decree Holders and cause loss to them. The affidavit filed along with the petition is sufficient that respondents 1 to 5 raised ground that the petitioner is delaying payment of award amount with dishonest intention, but that must be substantiated by evidence. To substantiate the contention of respondents 1 to 5, PWs.1 and 2 were examined and marked Ex.A.1 to contend that the petitioner has sufficient means to pay the award amount and the petitioner/2nd Judgment Debtor has 1/3rd share in the land in Survey Nos. 181/A2 and 180/A2, to an extent of Ac.3.10 guntas situated at Uyyalavada Village of Nagarkurnool Mandal and patta of said land stands in the name of mother of the petitioner/Judgment Debtor No.2 and it is ancestral property. The said land was devolved upon the legal heirs, after the death of his father, who was original owner of the property and market value is Rs.20 lakhs. In the cross examination, except a suggestion that Judgment Debtor No.2 has no means to pay award amount and also

denied the value of the land at Rs.20 lakhs. Absolutely, there is nothing to establish that Judgment Debtor No.2 has no intention to avoid payment of award amount. Moreover, PW.2 stated about means of the petitioner and in the cross-examination, he admitted that the land was mutated in the name of Judgment Debtor No.2, though his father was the owner of the property having purchased the same under registered document. The petitioner herein alone was examined and Ex.A.1 was filed to prove that the petitioner have means to pay the award amount. The evidence of the petitioner, who is examined as RW.1, shows that he simply denied possession of any property. In the cross-examination, a suggestion was put to him that he owned Ac.3.00 guntas of land in Uyyalavada Village worth Rs.60 lakhs per acre. Therefore, nothing has been elicited in the cross-examination to prove the means of the petitioner. But on overall consideration of material coupled with Ex.P.1, it is clear that father of the petitioner was owner of the land and after the death of his father, legal heirs succeeded the property. Conveniently, property was mutated in the name of mother of the petitioner. This itself indicates the intention of the petitioner to avoid payment of award amount. The petitioner being legal heir, is entitled to claim share in the property along with other legal heirs, but for one reason or the other, the petitioner did not pay the award amount.

Learned counsel for the petitioner though contended that the Court has to record finding as to dishonest and malafide intention of the petitioner to avoid payment of award amount. In fact, it was not his case at any stage either before the Court below or before this Court.

In any view of the matter, it would not fall within three circumstances enumerated under Section 115 C.P.C. to interfere with the impugned order. Execution petition was filed before the Court below for realization of award amount by the legal heirs of the deceased Srinivasulu @ Telugu Srinivasulu, who died in the road accident. On account of death of Srinivalusu, the claimants lost their support and even now the petitioner is not permitting them to realize the award amount making obstacles at every stage. If such practice is encouraged, the legal heirs of the deceased will become destitutes without any means. Therefore, the impugned order passed by the Court below does not call for any interference. However, it is left open to the petitioner to settle the dispute amicably in the Court or outside the Court.

In the result, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

06.11.2018
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