

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2157 of 2018

ORDER:

- 1) Assailing the order dated 30.09.2016, passed in E.P.No.22 of 2011 in O.S.No.166 of 2009 on the file of the Junior Civil Judge, Razole, wherein an application filed under Order XXI Rules 54, 66 and 64 of CPC, seeking to issue notice and attachment of schedule property to the judgment debtors and sell the schedule property for realization of the decretal amount, was dismissed on the ground of jurisdiction, the present Civil Revision Petition is filed under Section 115 of C.P.C.
- 2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in E.P.
- 3) The petitioner/decree holder filed a suit for recovery of Rs.81,521/- with subsequent interest. The matter was settled before the Lok Adalath on 20.02.2010; an award came to be passed directing the judgment debtors to pay a sum of Rs.65,000/- towards full satisfaction of the suit claim on or before 20.06.2010, failing which the decree holder was held entitled to execute the decree. In spite of demands, the judgment debtors failed to pay the said amount. Hence, the decree holder filed E.P.No.22 of 2011.
- 4) The 2nd respondent/judgment debtor remained exparte. A counter came to be filed by the 1st respondent/judgment debtor,

denying the allegations made in the petition and also stated that the schedule property does not belong to him. It is his case that the schedule property belongs to his wife Vundavalli Ananthalakshmi, who acquired the same under a registered gift deed dated 02.08.2007, which was prior to filing of the suit. According to him, he has no right, title or interest over the schedule property. It is also stated that the said Ananthalakshmi sold the property to Bolla Lakshmi Tulasi Ratnam, vide registered sale deed dated 01.03.2014. Therefore, it is pleaded that the 1st judgment debtor has no right over the property.

5) The whereabouts of the second judgment debtor are not known.

6) During the course of trial in E.P., PW.1 was examined and Exs.P1 to P4 marked. On behalf of the judgment debtors RW.1 was examined and Exs.R1 and R2 came to be marked.

7) After considering the material on record, the Court below held that in view of the fact that an I.P. came to be filed before the Senior Civil Judge's Court, Razole, only that Court will get jurisdiction to entertain the E.P.

8) In spite of service of notice, there is no representation on behalf of the respondents. Hence, heard the learned counsel for the petitioner.

9) From the material available on record, it is clear that the respondents herein borrowed an amount of Rs.60,000/- each from

the decree holder by executing promissory notes dated 06.01.2006. Originally the E.P. schedule property belongs to the 1st judgment debtor and he gifted the same to his wife Anantha Lakshmi on 02.08.2007, who in turn sold the same to her daughter Bolla Tulasi Patnam. The record also reveals that the petitioner/decree holder along with others filed I.P. before the Senior Civil Judge, Razole, against the judgment debtors herein and Anantha Lakshmi. The same was settled before the Lok Adalat on 20.02.2010 and an award was passed, which is placed on record as Ex.P4. The award reveals that the suits filed by the petitioner in O.S.No.166 of 2009 and another in O.S.No.165 of 2009 on the file of the Junior Civil Judge's Court, Razole against the judgment debtors herein were also decreed. For recovery of the suit amount, the petitioner filed the present E.P. The petitioner is entitled to proceed against the I.P. schedule property i.e., the building of the 3rd respondent covered under settlement deed dated 02.08.2007. It may not be proper for this Court to go into the merits of the case, as the Court below did not consider the issue and the application came to be rejected only on the ground of jurisdiction.

10) It is well established principles of law that there cannot be any E.P. in I.P. Further, the petitioner herein has not filed the present E.P. in I.P. as observed by the Court below, but the petitioner filed E.P. in the suit only, which was also settled before the Lok Adalath.

11) Having regard to the above, it cannot be said that the petitioner has to move an E.P. in the I.P., which is pending in Senior Civil Judge's Court, Razole. Hence, the Civil Revision Petition is allowed, directing the Junior Civil Judge, Razole, to hear the E.P. and pass orders in accordance with law.

12) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.08.2018
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