

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2996 OF 2017

ORDER:

This civil revision petition is filed under Section 115 of CPC assailing the order dated 30.3.2017 passed in E.P. No.01 of 2016 in O.S.No.78 of 2009 on the file of the Court of Senior Civil Judge, Nandigama.

2. Heard learned counsel for both the parties.

3. The first respondent filed O.S.No.78 of 2009 on the file of the Court of Senior Civil Judge, Nandigama, against the petitioners and respondent Nos.2 and 3. After full-fledged trial, the suit was decreed in favour of the first respondent and against the petitioners and respondent Nos.2 and 3. In order to realise the decretal amount, the first respondent filed E.P.No.01 of 2016 under Order XXI Rules 11(1) and 48 of CPC for attachment of the salary of the petitioner-Judgment Debtor No.2 (J.Dr No.2). The executing Court, by the impugned order, attached the salary of the petitioner-J.Dr No.2. Hence, the revision.

4. The contention of learned counsel for the petitioner is that the suit was decreed against the estate of late Kota Venkata Ramana Rao, which is in the hands of the J.Drs. In order to appreciate the said contention, it is not out of place to extract hereunder the relevant portion of the judgment in O.S.No.78 of 2009, which reads as follows:

“ Suit is decreed with costs against the estate of the deceased Kota Venkata Ramana Rao, which is in the hands of the defendants, for a sum of Rs.3,44,000/- with subsequent interest at the rate of 12% per annum from the date of suit till the date of decree and thereafter at the rate of 6% per annum till realisation on the principal sum of Rs.2,00,000/-.”

5. A perusal of the above clearly reveals that the trial Court decreed the suit against the estate of late Kota Venkata Ramana Rao. To substantiate the argument, learned counsel for the petitioner has drawn the attention of the decision of this Court in **Bandaru Srinivasa Rao v M/s.Sreyobhilashi Chit Funds, Wya**¹.

Paragraph Nos.6 and 7 read as follows:

6. In the present case, the trial Court extracting the contentions raised by both parties allowed the application by finding that except denying that he did not succeed to the estate of his father, the fourth respondent has not put forth any evidence. Thus, in view of Section 50(2) of C.P.C., the fourth respondent is liable to pay the amount to the extent of the property of the deceased-third judgment debtor. When the attachment of the salary of the legal representative is sought for, the initial burden is on the decree holder to prove that he inherited to any property of his father. In the absence of that, the attachment cannot be ordered and therefore, I am inclined to set aside.

7. Accordingly, the Civil Revision Petition is allowed and the order dated 16.9.2003 in E.P. No.707 of 2002 in O.S.No.563 of 1996 is set aside. However, the decree holder is at liberty to file another E.P., if there is sufficient material to show that the fourth judgment debtor inherited the property of his father.

6. The facts of the case on hand are almost identical to the facts of the case cited supra. In the instant case, instead of filing E.P., to attach the estate of late Kota Venkata Ramana Rao, the first respondent filed the E.P., for attachment of the salary of the petitioner-J.Dr No.2. Therefore, the impugned order passed by the executing Court is not sustainable either on facts or in law.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that it is a fit case to set aside the impugned order.

¹ AIR 2008 AP 97

8. In the result, the civil revision petition is allowed setting aside the order dated 30.3.2017 passed in E.P. No.01 of 2016. Consequently, E.P.No.01 of 2016 in O.S.No.78 of 2009 on the file of the Court of Senior Civil Judge, Nandigama is dismissed. Miscellaneous petitions, if any pending in this petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.7.2018

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