

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.3087 of 2016****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed questioning the Order dt. 17.03.2016 in EP.No.103 of 2015 in O.S.No.248 of 2014 passed by the Additional Senior Civil Judge, Tirupathi, dismissing the execution petition on the ground that the petitioner/DHr did not file any document to show the absolute right and title of the J.Dr to the schedule property and in the absence of any valid document, the sale of EP schedule property is not just and proper.

Aggrieved by the Order dt. 17.03.2016, the present Civil Revision Petition is filed contending that the suit was filed for recovery of amount and along with the suit, he filed a petition under Order 38 Rule 5 CPC for attachment before judgment, the attachment was effected and made absolute by Order dt. 16.02.2014, by the Original Court. Thereafter, he filed EP.No.103 of 2015 for execution of the decree passed by the trial Court for sale of the schedule property under Order 21 Rule 66 CPC after issuing a sale notice to the respondent/defendant.

The respondent/J.Dr appeared before the Executing Court and filed Counter contending that he is a retired employee depending upon his pension and he underwent bypass surgery and he is on bed while undergoing to treatment. The EP schedule property is not liable for attachment since there is a ban by the Government for registration of sale and he did not possess any assets to realize the decree debt and, therefore, he has no means to pay the decree debt and that the schedule property cannot be brought for sale since the Government had imposed a ban on the schedule property.

It is also contended that the measurements and boundaries mentioned in the EP is absolutely wrong and the descriptive particulars of the EP schedule property with regard to measurements and boundaries were not given properly and thereby the EP is not maintainable and prayed to dismiss the petition.

Upon hearing both the counsel, the Executing Court passed an Order holding that in the absence of any document to prove the ownership of the JDR, the EP is not maintainable.

Aggrieved by the above Order, the Petitioner/DHR filed this Petition under Article 227 of the Constitution of India, instead of filing under Section 115 of CPC. But, the grounds urged in the petition are that failure to mention the measurements of each boundary or wrong mention of boundaries etc., as contended by the petitioner are not correct and when the property was attached and the attachment before judgment was made absolute in a petition filed under Order 38 Rules 5 CPC, this objection is not tenable at this stage and if for any reason, the boundaries are not tallying with the existing boundaries on the land, the remedy is otherwise. But, on the ground that the petitioner did not produce any valid document to establish that the J.Dr is owner of the property, EP cannot be dismissed and prayed to set aside the Order passed by the Additional Senior Civil Judge, Tirupathi.

During hearing, learned counsel for the petitioner, reiterated the contentions raised in the grounds of the revision petition. Whereas, the learned counsel for the respondent contended that he is not the owner of the property and the boundaries and survey numbers were wrongly mentioned in the schedule annexed to the petition No.387 of 2014 in O.S.No.248 of 2014 filed under Order 38 Rules 5 CPC and even if the property is sold in view of the ban, the registration cannot be effected

and prayed for dismissal of the petition, confirming the Order passed by the Executing Court.

Undisputedly, the property was got attached before judgment by filing application under Order 38 Rules 5 CPC and it was made absolute by Order dt. 16.12.2014 and thereafter, a decree was passed on contest and the petitioner filed the present EP No.103 of 2015 in O.S.No.248 of 2014 for sale of the property attached before judgment to realise the decree debt by issuing sale notice to the respondent and sell the same. The respondent/J.Dr, on appearance, raised a specific contention that he is not the owner of the property and the boundaries and survey numbers mentioned in the schedule annexed to the EP are not tallying with the existing boundaries on ground. The respondent/J.Dr is contending that he is not the owner of the property. In such a case, it is for the person, who is the owner of the property, to file appropriate application under Order 21 Rules 58 CPC to raise the attachment by filing a claim petition. But, this respondent cannot raise such contention when he is not the owner of the schedule property. Based on such contention, the Executing Court is not supposed to dismiss the EP and production of any valid sale deed along with the execution petition to establish that J.Dr is the owner of the property, is not a requirement either under CPC or Civil Rules of Practice. Insisting to produce a document and dismissal of the execution petition on the ground of non-compliance is a serious illegality committed by the executing Court. According to Order 7 Rule 3 CPC, when the property claim is in respect of immovable property mentioning of survey number of the land or door number of the house or the boundaries is sufficient to identify the property and the petitioner complied the requirement under Order 7 Rule 3 CPC while obtaining under Order 38 Rules 5 CPC, which was made absolute on 16.12.2014. Even otherwise, if the survey number is in dispute, the boundaries will prevail and if the boundaries and extents

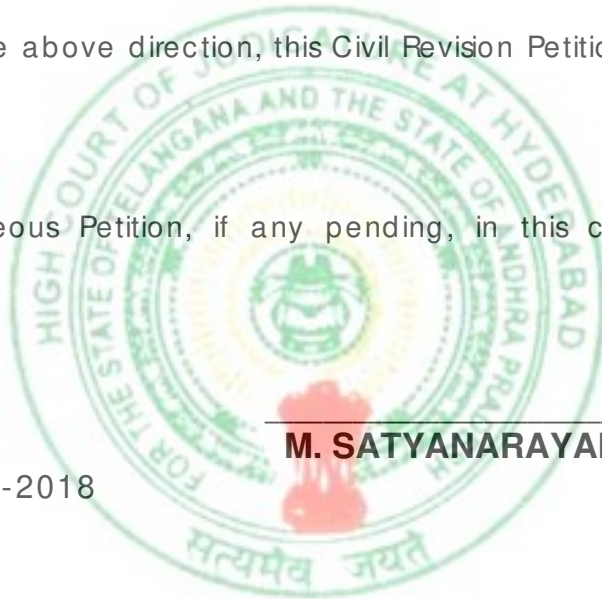
are in dispute, survey number will prevail. But, on the ground of failure to produce any valid document to prove the ownership of the J.Dr, the EP cannot be dismissed. Hence, the Order passed by the Executing Court is hereby set aside as the Executing Court exercised its jurisdiction illegally and irregularly within Clause 3 of Section 115 of CPC and accordingly, the dismissal order is set aside restoring EP No.103 of 2015 in O.S.No.248 of 2014 on the file Additional Senior Civil Judge, Tirupathi, Chittoor District, directing the proceed with the Execution Petition in accordance with law. Leaving it open to the petitioner or any other person to file appropriate application under law.

With the above direction, this Civil Revision Petition is allowed. No costs.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

Date: 08-02-2018
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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