

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

C.R.P.No.2216 of 2018

ORDER

Heard learned counsel for petitioners, learned counsel for respondents and perused the record.

2. The present revision is filed under Section 115 of C.P.C., assailing the order dated 08.02.2018 passed in E.A.No.370 of 2017 in E.A.No.593 of 2016 in E.P.No.89 of 2013 in O.S.No.74 of 2011 by the II Additional Senior Civil Judge, Kakinada, wherein the application filed by the petitioners/plaintiffs under Order VII Rule 11(d) and u/s.151 CPC, to reject the claim petition as the document dated 05.07.2008 has no legal enforceability, was dismissed.

3. A perusal of the material on record would show that the petitioners/plaintiffs filed O.S.No.74 of 2011 on the file of II Additional Senior Civil Judge, Kakinada, for recovery of the amount, based on a registered mortgage deed. The said suit was decreed preliminarily on 29.02.2012 and final decree was passed on 23.04.2013. After passing of the final decree, E.P.No.89 of 2013 came to be filed. In the said E.P., the first respondent/claim petitioner filed E.A.No.593 of 2016 seeking to raise attachment of EP schedule property. Pending the said E.A., the petitioners filed E.A.No.370 of 2017, to reject the claim petition as document dated 05.07.2008 has no legal enforceability.

4. A perusal of the averments in the affidavit filed in support of the application would show that since the document dated 05.07.2008 is not a registered one and is not properly stamped, it cannot be accepted. Apart from that, it is also stated that the said document cannot be brought on record, as it is a time barred debt. It is further pleaded that the said document was created and fabricated in collusion with respondents 2 to 7 herein as the claim petitioner is none other than the second attester to the said document.

5. The first respondent/claim petitioner filed counter stating that she is the agreement holder with possession of two portions of property bearing D.No.4-3-28 situated at Kameswari Nagar, Kakinada. It is stated that on 05.07.2008, the husband of 4th respondent, by name, Jeevan Kumar, during his life time, along with his wife, brother and sister-in-law, put up the said two portions of house property for sale towards discharge of their debts and the claim petitioner offered to purchase the same for Rs.5,00,000/-, for which they agreed and executed a possessory sale agreement, and on receipt of the entire sale consideration, they delivered possession of two portions to her. Since then, the claim petitioner is in peaceful possession and enjoyment of the said property. Hence, prays to reject E.A.No.370 of 2017.

6. After considering the contentions of the parties, the Court below passed the impugned order.

7. When the matter is taken up for hearing, it is brought to the notice of this Court that in respect of the very same property, sale deed came to be executed by respondents 4 to 6 on 21.12.2016 in favour of the claim petitioner pursuant to the agreement of sale dated 05.07.2008 and the said sale deed was also marked in the said proceedings. In view of the execution of sale deed, the counsel for the first respondent would submit that the first respondent will not be insisting on the agreement of sale in adjudication of the dispute.

8. Having regard to the facts and circumstances of the case and recording the statement of the counsel for the first respondent, the present Civil Revision Petition is disposed of, giving liberty to the petitioners to raise their objections with regard to the sale deed which is already marked. The trial Court shall dispose of the E.P. proceedings in accordance with law, as expeditiously as possible. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15th June, 2018

sj