

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

SECOND APPEAL No.1277 of 2018

JUDGMENT:

1) The present Second Appeal came to be filed questioning the judgment and decree in A.S.No.155 of 2014 on the file of the XII Additional District Judge, Pithapuram, wherein the lower appellate Court confirmed the orders passed in E.A.No.30 of 2008 in E.P.No.37 of 2005 in O.S.No.4 of 2000 on the file of the Principal Junior Civil Judge, Tuni.

2) The facts in issue are as under:

The 1st respondent herein filed O.S.No.4 of 2000 against the second respondent herein contending that her husband Srinivasa Rao borrowed amount from him and obtained an exparte decree. Since the second respondent failed to comply with the decree, the 1st respondent filed E.P.No.37 of 2005 and got the schedule property sold in a court auction. Thereafter, the petitioners filed a claim-petition vide E.A.No.30 of 2008, claiming a share in the plaint schedule property. It is stated in the claim-petition that the 2nd respondent is the wife of the brother of the petitioners and the petition schedule property is the ancestral property of the petitioners and husband of the 2nd respondent ie. late Srinivasa Rao, which was not partitioned and the same is in

joint possession of the petitioners and Srinivasa Rao. Even after the death of late Srinivasa, the schedule property is in joint possession. The petitioners came to know that the first respondent filed a suit against the second respondent and obtained a decree, filed E.P. and also obtained delivery warrant. The petitioners came to know about the same when the Court Amin came to the petition schedule property to deliver the property. As the petition schedule property is the joint family property of the petitioners and the husband of the second respondent, the petitioners filed claim-petition.

3) The first respondent filed counter stating that the documents filed by the petitioners are created and that the petition is barred by limitation. It is also contended that no claim-petition is maintainable after the sale is conducted and no petition can be filed after the expiry of 60 days from the date of sale ie. 01.05.2007. After considering the rival submissions, the executing Court dismissed the claim-petition. Aggrieved by the same, the petitioners filed A.S.No.155 of 2014 before the XII Additional District Judge, Pithapuram. Vide judgment dated 27.02.2018, the learned XII Additional District Judge, Pithapuram, dismissed the appeal. Challenging the same, the present Second Appeal came to be filed.

4) As seen from the record, the reason for rejection appears to be based on factual aspects. PWs.1 and 2 admitted in their

evidence that though they had knowledge about the attachment of petition schedule property on 22.01.2000, they did not take any steps to make any claim or objection at that time. Though the petitioners were aware about the attachment of petition schedule property, they did not file any claim-petition at the earliest point of time.

5) As per proviso to Order XXI Rule 58 of C.P.C. no such claim or objection shall be entertained where the property attached has already been sold before the claim is preferred or objection is made.

6) From the above, it is clear that the petitioners, who are aware about the attachment at the earliest point of time, did not put forth their claim. Having regard to the above and since both the Courts, have concurrently held against the appellants, I see no grounds to interfere with the impugned order.

7) Accordingly, the Second Appeal is dismissed at the admission stage.

8) There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.09.2018
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