

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3596 of 2018

ORDER:

Aggrieved by an order passed by the Executing Court on an application filed under Order XXII Rule 4 of the Code of Civil Procedure, 1908, bringing on record in the execution proceedings, a person claiming to be a legatee under a Will, third parties who have filed claim petitions have come up with the above revision.

2. Heard Mr. Krishna Dean, learned counsel for the revision petitioners and Mr. Gade Venkateswara Rao, learned counsel appearing for respondents.

3. One Mr. Sunil Agrawal, who is now no more, secured a decree for specific performance. Thereafter, he claimed to have assigned the decree in favour of one Mr. Deen Dayal Agrawal. During the execution proceedings, which are pending for the past 15 years, Deen Dayal Agrawal died. A third party claiming to be a legatee under a Will allegedly executed by Deen Dayal Agrawal filed an application in E.A.No.849 of 2017 under Order XXII Rule 4 CPC. It was allowed forcing the third parties, who have set up independent title and who have filed independent claim petitions in E.A.No.247 of 2003 have come up with the above revision.

4. Technically, I have no difficulty in accepting the two contentions made by the learned counsel for the petitioners namely (1) that such an application under Order XXII Rule 4 CPC could not have been allowed; and (2) that a person claiming under a Will

cannot be brought on record unless the Will is proved especially when the Will excludes biological children.

5. But, throwing out the petitions of the third parties' legatee would only multiply proceedings. After all the petitioners herein are third parties who have filed claim petitions way back in 2003. If they want to succeed in ensuring that the decree is not executed against this property, it is better for them to succeed against all parties claiming under the decree holder. All other contentions are left open to be adjudicated. Therefore, in their own interest, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 09-11-2018

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