

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3938 of 2018

ORDER:

This revision is filed by the petitioner/third party, aggrieved by the order dated 20.06.2018 in C.F.No.1376 of 2018 in E.A.No...of 2018 in E.P.No.196 of 2006 in O.S.No.452 of 2004 passed by the I Additional Senior Civil Judge, Nellore.

2. The petitioner is a third party claimant. The above suit was filed for specific performance of the contract for sale maintained by the 1st respondent against 2nd respondent, originally. The 2nd respondent was sole defendant and his sons were came on record as co-defendants in the suit. Some of the parties i.e., defendants 4 and 8 died pending suit and their legal representatives came on record. The suit was ultimately decreed on 09.11.2006.

3. Against the decree, the matter went in appeal and upto Supreme Court. The plaintiff's decree for specific performance in the trial Court was ultimately confirmed if not modified.

4. Leave about any suits subsequently filed regarding the alleged decree obtained by fraud and its maintainability not germane herein to discuss further, though arguments with rival submitted in the course of hearing. So far as the present

claim petition is concerned, it is in E.P.No.196 of 2006 filed by the decree holder for execution of sale deed, by directing the judgment debtors or in their behalf by the Court in the event of their failure under Order XXI Rules 32 to 34 CPC, claim petition is filed by the petitioners, which is the un-numbered EA covered by C.F.No.1376 of 2018. The learned I Additional Senior Civil Judge, by docket order, dated 20.06.2018, rejected the same. The observation therein is that the petition is not maintainable after passing of orders in main E.P. on 31.01.2018 whereas the claim petition filed on 14.02.2018, that too, when the petitioners claiming title over the property based on an unregistered settlement deed and the said document is not admissible, as it is not a document of title.

5. Though said observation of the document is not admissible and not a document of title is premature and admissibility to be decided at the relevant time if at all during marking if document placed reliance on it, that too, when if duly stamped or not and when once stamped, whether it can be admitted for collateral purpose including possession. Thus, there is force in the contention of the learned counsel for the petitioner against said observation in rejecting the claim petition. However, as rightly pointed by

the learned counsel for the 1st respondent/ decree holder, the very claim petition is not maintainable under Order XXI Rule 58 CPC, claim arises against attachment of immovable property under Order XXI Rule 34 or Order 38 Rule 5 r/ w Rule 11A CPC, that too, where if at all attachment before judgment, there is a provision for claim under Order 38 itself. What the petitioner in the claim petition mentions is the 2nd respondent to the present claim petition and revision no other than 1st defendant to the suit has no title over the property to enter into contract for sale with the 1st respondent, for the fact that prior to that, they already given the property under oral gift deed covered by pasupu-kumkuma and executed document evidencing the transaction and the claimant is in possession of the property pursuant to it and the suit and the decree and if at all any sale deed to be executed not binding on her. It is premature to go into even from such a contention for such right is available and left open to consider uninfluenced by the impugned rejection order, which is the subject matter of revision, as that stage arises if at all after execution of sale deed, when sought for taking delivery from any obstruction before dispossession for a third party to make a claim under Order XXI Rule 97 r/ w 99

CPC for a deemed decree based under Order 21 Rule 101 CPC on such claim.

6. With the above observations, the Civil Revision Petition is disposed of without prejudice to the existing rights and defences of both the parties.

7. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2018
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