

**THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**C.R.P.No.1340 of 2011**

**ORDER**

This revision under Section 115 of CPC is filed challenging the order dated 07.03.2011 passed in E.P.No.15 of 2005 in O.S.No.132 of 1995 by the Senior Civil Judge, Bapatla, ordering proclamation and sale of E.P. schedule property.

2. The respondent/D.Hr., filed E.P., to realise the decree debt in O.S.No.132 of 1995 by attachment and sale of the property under Order XXI Rules 64 and 66 of CPC. He contended that the schedule property belongs to the petitioner/J.Dr., herein.

3. Whereas the petitioner/J.Dr., filed counter in the said E.P., denying the material allegations, *inter alia*, contending that the E.P. is not maintainable, as he is not the owner of entire extent of land of Ac.1.65 cents in D.No.402/1 of Kankatapalem village and as per Section 60 of CPC, the decree holder has to proceed with the property of the judgment debtor only and that the judgment debtor and his father divided joint family property and executed a registered partition deed on 19.06.1995 and as per the partition deed, Ac.1.00 was allotted to the share of judgment debtor and that the father of judgment debtor, by name, Yarra Venkateswarlu, was in possession and enjoyment of the property fell to his share. The pattadar passbooks and title deeds were issued for the said property in favour of said Venkateswarlu and in the said partition, the western side part of land to an extent of Ac.1.00 cents was allotted to the

judgment debtor and he does not own the land to an extent of Ac.1.65 cents in Sy.No.402/1 of Kankatapalem village. It is also contended that the father of judgment debtor had executed a registered will on 25.11.1996 bequeathing his property and landed property i.e, Ac.8.78½ cents to his daughter and that the said Venkateswarlu died on 07.07.2000. Previously, there were execution proceedings between the decree holder and the judgment debtor and the sisters of judgment debtor filed claim petition in E.A.No.99 of 2001, which was dismissed and later, they preferred CMA No.34 of 2002, which was also dismissed. One Yarra Venkateswarlu's legal heirs, his wife Venkayamma, son, judgment debtor and two daughters, by name, Sarada and Rajeswari and the schedule mentioned property is undivided, joint property, therefore, he is not the owner of said property, which cannot be sold in execution of the decree under Order XXI Rules 64 and 66 of CPC. It is also contended that the value of the land is more than Rs.3,50,000/- and the amount due as per execution petition is Rs.1,17,000/- and odd and the entire property cannot be sold for realisation of the decretal amount.

4. The executing Court, after making necessary enquiry, ordered proclamation and sale of the property.

5. Aggrieved by the order, the present revision is filed solely on the ground that the petitioner/J.Dr., is not the owner of Ac.1.65 cents of land that fell to the share of his father and therefore, the part of the property is not liable for sale in execution of the decree for

realisation of the debt due. But the Court below committed an error in disbelieving the contention.

6. During hearing, Sri C.C.S.Sastry, learned counsel for petitioner, contended that the petitioner/J.Dr., is not the owner of land to an extent of Ac.1.65 cents and therefore, the said property cannot be attached and sold in execution of the decree and prayed to set aside the order passed by executing Court.

7. According to the contention of the counsel for petitioner, the petitioner is the owner of Ac.1.00 of agricultural land in Sy.No.402/1 of Kankatapalem village and Ac.0.65 cents of land does not belong to him. No doubt, if the admission, made by the petitioner is accepted, he is the owner of property to an extent of Ac.1.00 in D.No.402/1 and Ac.0.65 cents of land belongs to the others. If really, Ac.0.65 cents belongs to the third party, the third party, who is having right and interest in the property, can make a proper application under Order XXI Rule 58 of CPC. But, only based on the contention of the petitioner without producing any evidence before the Court, it is difficult to accept such contention. Even otherwise, Ac.1.00 of land was allegedly belonging to the petitioner is liable for sale under order XXI Rules 64 and 66 of CPC, if the allegation that the land to an extent of Ac.0.65 cents belonging to the third party, without specifying the boundaries of the property which was allotted to the petitioner and the property allotted to the third property, the contention of the counsel for petitioner/J.Dr., is not acceptable.

8. In the E.P., the petitioner/J.Dr., was examined as R.W.1. He filed his affidavit in lieu of examination-in-chief under Order XVIII Rule 4 of CPC. In the cross-examination, he admitted that Ex.B1-certified copy of registered partition deed in E.A.No.76 of 2000 in E.P.No.91 of 1997 in O.S.No.21 of 1996 was filed and the same was disbelieved by the Court after enquiry and conducted auction of the property in the said proceedings. Therefore, Ex.B1 cannot be pressed into service again. On over all consideration of the material on record, the petitioner failed to establish that the land to an extent of Ac.0.65 cents out of Ac.1.65 in D.No.402/1 does not belong to him. Hence, the contention of petitioner cannot be accepted. However, if the third party files any application under Order XXI Rule 58 of CPC, the Court is required to adjudicate the claim in accordance with law. Hence, I find no grounds to set aside the order impugned.

9. With the above observation, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

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**M. SATYANARAYANA MURTHY, J**

6<sup>th</sup> March, 2018

sj