

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3832 of 2017

ORDER:

This civil revision petition is filed by the Judgment Debtor Nos.1 to 3, under Section 115 of CPC, assailing the order dated 27.6.2017 passed in E.P. No.75 of 2016 in O.S.No.104 of 2012 on the file of the Court of Senior Civil Judge, Repalle, Guntur District.

2. Heard the learned counsel for the petitioners and learned counsel for first respondent.

3. The facts leading to filing of the revision petition are as follows: The first respondent filed O.S.No.104 of 2012 on the file of the Court of Senior Civil Judge, Repalle, against the petitioners and second respondent, for recovery of the suit amount borrowed by late Kantamaneni Bhavani Prasad. The suit was decreed on 11.3.2016 in favour of the first respondent. In order to realize the decretal amount, first respondent filed E.P. No.75 of 2016 in O.S.No.104 of 2012. On 09.11.2016, the executing Court passed the order attaching the E.P. schedule property. The second petitioner opposed the petition on the ground that the E.P. schedule property belongs to her. The executing Court, by the impugned order dated 27.6.2017, made the attachment order dated 09.11.2016 absolute and declared the E.P. schedule property is liable to be sold. Aggrieved by the said order, the present revision petition is filed.

4. The learned counsel for the petitioners strenuously submitted that the E.P. schedule property, which was brought for

sale, was purchased by the second petitioner, under registered sale deed dated 25.2.2004 and this aspect was not considered by the executing Court. He further submitted that the impugned order passed by the executing Court is not sustainable either on facts or in law. ***Per contra***, learned counsel for the first respondent submitted that the petitioners being the legal representatives of late Bhavani Prasad are liable to pay the decretal amount. He further submitted that the executing Court rightly rejected the claim of the second petitioner.

5. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order, warranting interference of this Court?

6. It is an admitted fact that the petitioners and second respondent are the legal representatives of late Bhavani Prasad. It is not in dispute that the attached property was purchased by the second petitioner under a registered sale deed dated 25.2.2004.

7. In order to appreciate the contentions raised by the learned counsel for both the parties, it is not out of place to extract hereunder relevant portion of the judgment and decree in O.S.No.104 of 2012, which reads as follows:

Issue No.4:

20. In the result, the suit is decreed against D2 to D4 with costs for a sum of Rs.9,21,600/- with subsequent interest @ 12% p.a., from the date of suit till the date of decree and thereafter @ 6% p.a., till its realization on the principal sum of Rs.6,00,000/-, however, D2 to D4 are liable to pay the said amount only from and out of the **estate of late Kantamaneni Bhavani Prasad devolved upon them and lying in their hands.**

Decree:

1. That the defendants do pay to the plaintiff a sum of Rs.9,21,600/- towards the suit claim subsequent interest @ 12% p.a., from the date of suit till the date of decree and thereafter @ 6% p.a., till its realization on the principal sum of Rs.6,00,000/-, however, D2 to D4 are liable to pay the said amount only from and out of the **estate of late Kantamaneni Bhavani Prasad, devolved upon them and lying in their hands**, and;

8. A perusal of the record clearly reveals that the trial Court drafted the decree in terms of the operative portion of the judgment. The judgment and decree in O.S.No.104 of 2012 clearly reveals that first respondent is entitled to recover E.P., amount from and out of the estate of late Kantamaneni Bhavani Prasad, which was devolved and lying in their hands. The record further reveals that second petitioner purchased the E.P. schedule property under a registered sale deed dated 25.2.2004. The property in question is the self-acquired property of second petitioner. As per the terms and conditions of the decree, the first respondent has no right whatsoever to proceed against the personal properties of the petitioners and second respondent. The executing Court, without considering the scope of judgment and decree in O.S.No.104 of 2012, passed the impugned order. The impugned order is quite contrary to the judgment and decree of O.S.No.104 of 2012. If the impugned order is allowed to stand, it would certainly amount to miscarriage of justice. Viewed from factual or legal aspects, the impugned order is not sustainable.

9. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that this is a fit case to allow the revision petition.

10. Accordingly, the civil revision petition is allowed, setting aside the order dated 27.6.2017 passed in E.P. No.75 of 2016 in O.S.No.104 of 2012 on the file of the Court of Senior Civil Judge, Repalle, Guntur District. Miscellaneous petitions, if any pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.11.2018

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