

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.4334 of 2017

ORDER:

The revision petitioner is the decree-holder. Aggrieved over the order refusing to attach the E.P. schedule property which is Ac.0-15 guntas of land in Sy.No.7 situated at Korremula village, Ghatkesar Mandal, Rangareddy District, the present Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, 1908 (for short, 'C.P.C.').

2. The aforesaid order was passed on 29.12.2016 in E.P. No.106 of 2015 in O.S. NO.1282 of 2010 on the file of VII-Additional Senior Civil Judge, Rangareddy District at L.B. Nagar.

3. The suit was filed for recovery of amount on the foot of promissory note borrowed by the judgment-debtor, respondent herein, for family necessities. According to the revision petitioner, when the said amount was borrowed, towards security pattadar pass book and title deed book were handed over by the respondent. Therefore, basing on the said instance, decree-holder claims that E.P. schedule property is liable to be attached and sold for realisation of the decretal amount. Precisely, that has been the stand of the decree-holder.

4. The respondent/judgment-debtor resisted the request taking two-fold stand. Firstly, according to the respondent, he has gifted the entire extent of Ac.0-15 guntas of land to one N. Vinoda

under registered gift settlement deed dated 9.4.2012 registered as Document No.2064 of 2012 and possession thereof was also given. The judgment-debtor also puts forth the stand that an extent of 160 sq. yards was delivered to the decree-holder through an agreement of sale. It is, therefore, according to him that the decree-holder cannot attach the E.P. schedule property as no title lies in him as the title was already conveyed to the said Vinoda, beneficiary.

5. Second stand taken by him is that he neither created mortgage nor there was attachment of property before judgment. Therefore, Execution Petition is not maintainable. It is also his stand that mere delivery of pattadar pass book and title deed book would not amount to creating any right over the said extent more particularly it does not amount to creation of mortgage.

6. Execution Court referring to these factual aspects determined the point for consideration and on consideration of Exs.B1 and B2 which are the certified copy of statement of encumbrance on property and certified copy of Gift Settlement Deed, dated 9.4.2012, referring to the ruling in **State of Haryana and Ors. v. Navir Singh and another, And State of Punjab and Ors. V. Pagro Foods Ltd. and Ors.** [AIR 2014 SC 339 = (2014) 1 SCC 105 = (2013) 9 SCR 949]; **Rachpal v. Bhagwandas** [AIR 1950 SC 272]; **United Bank of India v. Lekharam Sonaram and Co.** [AIR 1965 SC 1591] deliberated on the effect of Exs.B1 and B2 and observing that the E.P. schedule property was not under attachment nor any valid mortgage

deed was entered into nor there was any creation of equitable mortgage by deposit of title deeds for want of mandatory requirements, negated the request dismissing the Execution Petition.

7. Heard Sri Ch. Srinivas, learned counsel for the petitioner. No representation for the respondent-judgment-debtor.

8. Learned counsel for the petitioner would submit that only with a view to delay and defeat the decree that would be passed in the suit, respondent herein deliberately executed Gift Settlement Deed in favour of the said Vinoda and thus, played fraud, and, therefore, Ex.B2 cannot bind the rights of the revision petitioner which the Court below did not properly comprehend and appreciate and thereby arrived at a wrong conclusion and dismissed the Execution Petition which ought not to have been done.

9. Now, the short point that arises for consideration is, whether the order under challenge suffers from any material irregularity warranting interference?

10. Admittedly, E.P. schedule property was not under attachment. The attachment is only now sought for under Rule 54 of Order 21 of C.P.C. The revision petitioner appears to have satisfied himself that the Title Deed Book and Pattadar Pass Book since deposited with him, would amount to creation of equitable mortgage by deposit of title deeds, and, therefore, now insists on attachment of

E.P. schedule property and selling the same to satisfy the decretal amount.

11. One thing is certain that mere handing over pattadar pass book and title deed book would not amount to creation of equitable mortgage deed by deposit of title deeds. The mandatory requirements have to be followed in regard to which learned Senior Civil Judge has elaborately dealt with referring to the rulings mentioned in the above. There is no need to once again reiterate what has been laid down by the Hon'ble Apex Court in the rulings referred to above. Therefore, it cannot be viewed that the respondent herein did create any mortgage or charge over the E.P. schedule property in favour of the revision petitioner.

12. The stand of the revision petitioner that Gift Settlement Deed is only sham and nominal document engineered by the respondent with a view to defeat the decree that would be passed is concerned, it is difficult at this stage to embark upon the said stand for the reason in Execution Petition the same cannot be deliberated upon. The remedy for the decree-holder lies elsewhere, that too if he has got any semblance of right over the E.P. schedule property.

13. Thus, when viewed, it is to be invariably held that there is no merit in the present Revision Petition and the present Civil Revision Petition is liable to be dismissed for the reason no material

irregularity or illegality is shown to have crept in the order under challenge.

14. The Civil Revision Petition is, therefore, dismissed. The dismissal of the present Revision Petition would not shut the doors to resort to any other mode of execution. The parties shall bear their own costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

Dt. 12.04.2018
gbs

A.SHANKAR NARAYANA

