

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6704 OF 2018

ORDER:

This revision petition is filed under Section 115 C.P.C. questioning the order dated 27.09.2018 passed in E.A.(SR)No.1176 of 2018 in E.P.No.16 of 2014 in O.S.No.53 of 2000 by the Junior Civil Judge, Narayanpet, whereby the petition filed by the petitioner on the ground that the third party cannot maintain petition under Order XXI Rule 97 and 101 read with Section 151 C.P.C.

Respondent No.1 obtained decree against respondent No.2/Judgment Debtor to realize the decree debt and filed E.P. against the 2nd respondent/JDr. The property was sold in execution proceedings and at that stage, the petitioner, who is third party filed petition under Order XXI Rules 97 and 101 C.P.C. on the ground that the petitioner is having direct interest in the property etc. But the petition was rejected on the ground that the third party is not entitled to raise such objection.

Aggrieved by the impugned order, the present revision petition is filed contending that the impugned order is contrary to law declared by the Apex Court in **Shreenath and another v Rajesh and others**¹.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition while drawing the attention of this Court to judgment of the Apex Court in **Shreenath's** case referred supra since the rejection of the petition is between the Court and no notice be ordered to the respondent.

It is an undisputed fact that the petitioner filed petition to decide his plea in the suit schedule property, but the Court below rejected the petition on the ground that the third party cannot maintain petition under Order XXI Rule 97 C.P.C. A bare look at Order XXI Rule 97 C.P.C. it is clear that

¹ AIR 1998 SC 1827

where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction and where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions contained.

The third party in possession of a property claiming independent right in the property, which is the subject matter of decree for possession of immovable property under execution, could resist such decree by seeking adjudication of his objections under Order XXI Rule 97 as held by the Apex Court in **Shreenath's** case referred supra. At the same time, in **Brahmadeo Chaudhary v Rishikesh Prasad Jaiswal and another**², it was held that the third party can maintain petition under Order XXI Rule 97 C.P.C. Therefore, rejection of the petition by the Court below is erroneous and contrary to the principles laid down in **Shreenath's** case referred supra and **Brahmadeo Chaudhary's** case referred supra.

In the result, the civil revision petition is allowed setting aside the order dated 27.09.2018 passed in E.A.(SR)No.1176 of 2018 in E.P.No.16 of 2014 in O.S.No53 of 2000 by the Junior Civil Judge, Narayanpet and directing the Junior Civil Judge, Narayanpet to register the petition on its representation, if it is otherwise in order. There shall be no order as to costs.

Pending miscellaneous Petitions, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

16.11.2018

kvrmm

² (1997)3 SCC 694