

The Hon'ble Sri Justice Raghvendra Singh Chauhan

Civil Revision Petition No.7303 of 2018

Order:

The petitioners are aggrieved by Order, dated 02-06-2018, in EP.No.14 of 2016 in OS.No.2804 of 2010, whereby the learned II Senior Civil Judge, City Civil Court, Hyderabad, has directed the attachment and sale of the suit schedule property, in order to recover a sum of Rs.5,34,470/- together with future interest, which is owed by the petitioners-Judgment Debtors to the respondent-Decree holder.

Briefly, the facts of the case are that, the respondent, Mr. P. Omkar, had filed the aforesaid suit for recovery of a sum of Rs.3,50,000/- against the petitioners. Subsequently, after the Judgment and Decree were passed in his favour, the respondent initiated execution proceedings before the Executing Court.

During the pendency of the Execution Proceedings, the respondent filed an application under Order XXI, Rules 54, 64 and 66 of CPC for attachment and sale of the suit schedule property.

The petitioners filed their counter contending, *firstly*, that one Ms.Afreen Sultana is the owner of the suit schedule property, and they are the tenants. *Secondly*, since the suit summons were not even served upon them, they could not contest the suit. *Thirdly*, the documents relied upon by the respondent were fabricated ones,

which do not contain their signatures. But, notwithstanding the pleas raised by the petitioners, the learned Judge has allowed the Application under Order XXI Rules 54, 64 and 66 CPC and directed to attach the suit schedule property for sale in order to realise the amount of Rs.5,34,470/-. Hence, this petition before this Court.

The learned Counsel for the petitioners has vehemently contended *firstly*, that the petitioners were indeed the tenants of Ms.Afreen Sultana and they have nothing to do with the suit schedule property.

Secondly, since the notices were not received from the trial Court, the petitioners were not in a position to contest the suit for recovery of money.

Thirdly, the entire suit was based upon fabricated documents. Therefore, the trial Court was not justified in passing the judgment and decree in favour of the respondent. Hence, the impugned order deserves to be set aside by this Court.

Heard the learned Counsel for the petitioners and perused the impugned order.

Although the petitioner claims that he is a tenant of Ms.Afreen Sultana, according to the learned Judge, no document has been shown to buttress this plea.

Even if an *ex-parte* decree had been passed by the learned trial Court against the petitioners, the latter were free to get the said decree set aside. But, there is no evidence on record to show that they had taken any step for doing the same.

Whether the documents relied upon by the respondent were fabricated ones or not is an issue that cannot be gone into by the Executing Court. For, the executing Court is not permitted to go behind the decree. Therefore, the contention raised by the learned Counsel for the petitioners, that the suit was based on fabricated documents, cannot be accepted at this stage. The learned Judge was certainly justified in passing the impugned order.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This Petition is devoid of any merit. It is, hereby, dismissed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, J)

Dt: 21st December, 2018
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