

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 7413 of 2017

ORDER:

1) Aggrieved by the order dated 15.11.2017, passed in E.A.No.199 of 2012 in E.P.No.26 of 2009 in O.S.No.233 of 2004 on the file of the Senior Civil Judge, Peddapuram, wherein an application filed by the third party under Section 146 and 151 C.P.C., to add him as a second decree holder in E.P.No.26 of 2009, was allowed, the present Civil Revision Petition is filed by the judgment debtor.

2) The facts in issue are that the original decree holder filed O.S.No.233 of 2004, for recovery of money against the judgment debtor, which was decreed. For realization of the said decretal amount, the decree holder filed E.P.No.26 of 2009. Pending E.P., the decree holder executed a Will dated 10.07.2001 infavour of the second respondent herein, which was attested by the husband, son and sister of the decree holder. The decree holder died on 13.08.2011. As per the Will, the second respondent is entitled to recover the E.P. amount as a sole legatee of the will. As such, he filed E.A.No.199 of 2012, to add him as second decree holder in E.P.No.26 of 2009, as a sole legatee of the original decree holder, for realization of the E.P. amount.

3) A counter came to be filed by the judgment debtor stating that the deceased never executed the Will dated

10.07.2011 and the same is a rank forgery. The second respondent is not the legal representative of the deceased decree holder and the legal representatives of the deceased decree holder were not brought on record. Hence, pleaded the petition is not maintainable.

4) In support of his contention, the second respondent herein got himself examined as PW.1 and also examined the attestors of the Will as PWs.2 to 4 apart from making Ex.P1. On behalf of the petitioner herein, RWs.1 to 3 were examined and no documents were marked. After considering the oral and documentary evidence, the trial Court allowed the said application. Challenging the same the present Civil Revision Petition is filed.

5) Learned counsel for the petitioner would submit that there are legal representatives of the deceased decree holder. Unless all the legal representatives, who admittedly having rights on the estate of the deceased brought on record, no third party can claim the decretal amount. He further submits that without obtaining succession certificate, the second respondent is not entitled to claim the decretal amount.

6) Learned counsel for the second respondent would submit that the husband, son and sister of the deceased, who are attestors of the Will, were examined who admitted the execution of the Will. As such, the second respondent is entitled to come on record for realization of the decretal amount. He further submits

that no succession certificate is required once the E.P. is filed. Hence, pleads that there is no illegality or irregularity in the order passed by the trial Court.

7) As seen from the record, when the judgment debtor failed to pay the decretal amount even after passing of the decree, the decree holder filed E.P.No.26 of 2009 for realization of the decretal amount. Pending the E.P., the decree holder executed an un-registered Will dated 10.07.2011 in favour of the second respondent stating that he is entitled to recover the E.P. amount. The decree holder died on 13.08.2011. As such, the second respondent filed the present application to add him as second decree holder in the E.P. In order to prove the execution of the Will, he got examined the attestors of the Will as PWs.2 to 4, who are the husband, son and sister of the deceased decree holder, who have admitted the execution of the Will. Though the petitioner has taken a plea that the decree holder never executed any Will and the same is a rank forgery, but she failed to prove the same. Therefore, the Court below came to a conclusion that the original decree holder executed the Will in favour of the second respondent and after the death of the original decree holder, the second respondent as a sole legatee of the Will, is entitled to recover the E.P. amount. As the petitioner *prima facie* failed to prove that the said Will is rank forgery, I see no illegality or irregularity in the order passed by the Court below.

8) Accordingly, the Civil Revision Petition is dismissed.
There shall be no order as to costs. Miscellaneous Petitions, if
any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.04.2018
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