

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2863 OF 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioners/Judgment Debtor Nos.3 to 6 aggrieved by the order, dated 22.07.2019, passed in E.P.No.6 of 2015 in O.S.No.1 of 1998 by the I Additional District Judge, Khammam, wherein the Executing Court issued attachment warrant under Order XXI Rule 54 C.P.C. against the revision petitioners/Judgment Debtor Nos.3 to 6 and respondent No.7/Judgment Debtor No.2 in respect of the E.P. schedule property subject to passing of final decree in O.S.No.59 of 1999 on the file of the Senior Civil Judge, Kothagudem, filed by respondent No.6/Judgment Debtor No.7, on payment of process.

2. Heard learned counsel for the revision petitioners/Judgment Debtor Nos.3 to 6 and perused the record.

3. Learned counsel for the revision petitioners/Judgment Debtor Nos.3 to 6 would submit that though the respondents/decreed holders were aware of the female legal representatives of deceased Judgment Debtor No.1/defendant No.1, they did not choose to bring them on record. Earlier, E.P.No.1 of 2012 filed by the respondents/decreed holders was dismissed for default for not bringing on record the female legal representatives of deceased Judgment Debtor No.1/defendant No.1. Under these circumstances, the Executing Court ought not

to have passed the impugned attachment order and ultimately, prayed to set aside the impugned order.

4. Aggrieved by the judgment and decree, dated 21.01.2002, rendered in the subject Suit, the respondents/decreed holders preferred first appeal. The revision petitioners/Judgment Debtor Nos.3 to 6 did not object the appeal being proceeded with, without bringing the female legal representatives of deceased Judgment Debtor No.1/defendant No.1 on record. Now, in the E.P. proceedings, they cannot prevent the attachment on the ground that the female legal representatives of deceased Judgment Debtor No.1/defendant No.1 are not added to the proceedings. Furthermore, the decree is subsisting. There is no dispute that the property attached was not succeeded by the revision petitioners/judgment debtors Nos.3 to 6 and respondent No.7/Judgment Debtor No.2, pursuant to the death of their father (defendant No.1). While answering the contentions raised on behalf of the revision petitioners/Judgment Debtor Nos.3 to 6, the Executing Court relied on a decision of the Honourable Apex Court in N.K. Mohammad Sulaiman v. N.C. Mohammad Ismail and others<sup>1</sup>, wherein it is held that if the decree holder *bona fide* proceeds under the impression that the deceased was well represented by the other legal representatives, after due enquiry, the proceedings will not vitiate. In the given case also, the respondents/decreed holders *bona fide* believed that

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<sup>1</sup> AIR 1966 SC 792

the revision petitioners/defendant Nos.3 to 6 and respondent No.7/defendant No.2 are the legal representatives of deceased Judgment Debtor No.1/defendant No.1 and proceeded with. This Court is in agreement with the said finding recorded by the Executing Court. Under these circumstances, the conditional attachment order passed by the Executing Court cannot be faulted. There is no perversity in the impugned order. The Civil Revision Petition is devoid of merit.

5. 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.

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Dr. SHAMEEM AKTHER, J

December 06, 2019.  
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