

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1592 of 2019

ORDER:

This civil revision petition is filed by the petitioner/Judgment Debtor under Section 115 of Code of Civil Procedure, 1908 ('CPC'), challenging the order dated 09.05.2019 passed in E.P.No.1 of 2016 in O.S.No.29 of 2014 by the I Additional Junior Civil Judge, Husnabad, wherein the Court below has allowed the subject E.P filed by the respondents/Decree Holders and consequently, issued warrant under Order XXI Rule 35 CPC to the Bailiff to give possession of the suit schedule property to the respondents/decree holders.

2) Heard the learned counsel for both sides and perused the record.

3) Learned counsel for the revision petitioner/Judgment Debtor contended that pending the suit in O.S.No.29 of 2014, the respondent No.3 herein/Decree Holder No.3/Plaintiff No.3 died on 08.06.2008 and without getting the Legal Representatives of respondent No.3 herein/Decree Holder No.3 on record, the trial Court passed the judgment and decree, which is nullity and inexecutable. The Court below without considering this aspect, allowed the subject E.P and issued the impugned attachment warrant, which is erroneous and ultimately prayed to set aside the same. In support of his contention, learned counsel relied upon the following decisions:

- i) *Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others*¹
- ii) *Ram Sarup vs. Munsu and others*²
- iii) *Gurnam Singh and others vs. Gurbachan Kaur and others*³
- iv) *Hemareddi and others vs. Ramachandra Yallappa Hosmani and others*⁴

4) On the other hand, learned counsel for the respondents contended that the Court below is justified in allowing the subject E.P and issuing the impugned warrant of attachment dated 09.05.2019. There is nothing to take a different view and ultimately prayed to dismiss the revision petition.

5) In view of the submissions made by both sides, the point for determination is:

“Whether there are merits in this Civil Revision Petition to allow?”

6) POINT: The revision petitioner/Judgment Debtor has filed a photocopy of the death certificate dated 12.09.2008 issued by the Sarpanch, Nawabpet Gram Panchayat, wherein it is mentioned that the respondent No.3 herein/Judgment Debtor No.3 died on 08.06.2008. Filing of photocopy of the death certificate in this Civil Revision Petition is not a proof of death. Further, altogether there are three Decree Holders, who sought execution of the decree for possession. In the event of death of one of the Decree Holders, the interest of the other decree holders shall not cease and as such,

¹ AIR 1970 SC 1475

² AIR 1963 Supreme Court 553

³ (2017) 13 SCC 414

⁴ (2019) 6 SCC 756

the decree is executable. Since the decree passed against the revision petitioner/Judgment Debtor is subsisting, there is no illegality in issuing the impugned warrant of attachment dated 09.05.2019. All the contentions raised on behalf of the revision petitioner are unsustainable. The decisions relied upon by the learned counsel for the petitioner are distinguishable from the facts and circumstances of the case on hand. There are no merits in this Civil Revision Petition and the same is liable to be dismissed.

7) Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Date: 21st January, 2020
scs

Dr. SHAMEEM AKTHER, J

