

*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ Civil Revision Petition No.2973 OF 2022

% 06.03.2024

Between:

D. Sudhakar and two others

Petitioners

Vs.

Mannepalli Sarojini

Respondent

! Counsel for Revision Petitioners : Sri P.V.Krishnamachary

^ Counsel for Respondents : Sri Thalari Ravinder Rao

<GIST:

> HEAD NOTE:

? Cases referred :

1. 2013 (2) ALT 263
2. 2013 93) ALT 143
3. 2000 AIHC 3871
4. 2013 (11) SCC 362
5. CRP No.1036 of 2021 decided on 17.11.2021

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI**Civil Revision Petition No.2973 OF 2022****ORDER:**

Aggrieved by the order dated 02.09.2022 in I.A.No.2 of 2022 in O.S.No.424 of 2022 (hereinafter will be referred as 'impugned order') passed by the learned Principal Junior Civil Judge – cum – Judicial Magistrate of First Class at Kothagudem (hereinafter will be referred as 'trial Court'), the respondents/defendants filed the present Civil Revision Petition to set aside the impugned order.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the trial Court.

3. The brief facts of the case as can be seen from the record available before the Court are that the petitioner/plaintiff filed O.S.No.424 of 2022 against the respondent Nos.1 to 3/defendant Nos.1 to 3 for recovery of money of Rs.4,86,000/- and along with the suit the petitioner/plaintiff also filed I.A.No.2 of 2022 under order XXXVIII Rule 5 of the Code of Civil Procedure for attachment of petition schedule amounts before judgment. The brief averments of the affidavit filed in support of the petition in I.A.No.2 of 2022 are as under:

a) The respondent No.1/defendant No.1 is the brother of respondent Nos.2 and 3/defendant Nos.2 and 3. The mother of respondents/defendants by name D. Anasuya had close acquaintance with the petitioner/plaintiff and out of such acquaintance, she borrowed an amount of Rs.3,00,000/- from the petitioner/plaintiff on 25.01.2020 for her family necessities and executed a pronote in favour of the petitioner/plaintiff on the same day at his house to the effect of promising him to repay the same together with agreed interest @ 24% either to him or to his order on demand.

b) Thereafter, despite repeated demands made by the petitioner/plaintiff, Smt. D. Anasuya did not repay the amount and avoiding the payment on one pretext or the other. Finally on 09.03.2022 Smt. D. Anasuya died intestate leaving the respondents/defendants as her legal heirs and successors to succeed her entire properties and assets and thereby the respondents are enjoying the properties of late D. Anasuya. Smt. D. Anasuya died without discharging the pronote amount to the petitioner/plaintiff.

c) After the death of Smt. D. Anasuya the petitioner/plaintiff made several oral demands to the respondents/defendant to pay the amount but the respondents put deaf ear and avoiding

the payment. The petitioner/plaintiff, vexed with the attitude of the respondents/defendant, approached the respondents/defendants on 04.08.2022 and demanded for repayment but there was no response. Hence, the petitioner/plaintiff filed the suit for recovery of the amount.

d) The original borrower D. Anasuya worked as J.P.A. vide I.D.No.1051643 in V. Stage KTPS Paloncha but unfortunately she died on 09.03.2022 while in service leaving the respondents as her legal heirs to succeed to her estate. The respondents submitted application before the employer of D. Anasuya to receive death benefits of late D. Anasuya and hurried attempts to receive the death benefits and leave the jurisdiction of the court without paying promissory note amount to the petitioner/plaintiff. If the respondents succeed in their attempts, the petitioner may not realize the suit amount in future. Moreover, the decree was sought against the estate of the deceased lying in the hands of respondents.

4. Heard both sides and perused the record including the grounds of revision.

5. The first and foremost contention of the learned counsel for the revision petitioners/respondents/defendants is that the

trial Court did not consider that the petitioner is residing in agency area and the warrant of attachment order and the trial Court without jurisdiction and without having any power issued the impugned order, which is bad in law. It is further contended that the Execution Court failed to follow the Section 136 of the Code of Civil Procedure, which lays down the procedure in case the property is situated outside the territorial jurisdiction of the Court and that the mode prescribed is that order of attachment shall be sent to the District Court within local limits of whose jurisdiction the property is situated and the District Court thereafter shall send the order of attachment to the subordinate court within whose jurisdiction the property is situated for affecting the attachment. In this connection, the learned counsel for the plaintiff filed G.O.Ms.No.64, dated 01.06.2022 of Law (LA.LA & J – Home – Courts.A2) Department issued by the Government of Telangana. In the above said GO, it is clearly mentioned that the Junior Civil Judge, Kothagudem can exercise jurisdiction over the areas of entire revenue mandals of Kothagudem, Palvanch, Burgampahad, Sujathanagar, Dammapeta and Aswaraopet and Nellipaka Village of Aswapuram Mandal. Admittedly, the respondents and petitioners are residents of Paloncha. Thus, in the case on hand, the trial Court can exercise its jurisdiction in passing the

impugned order. It is further evident from the impugned order that trial Court directed the Bailiff of the Court that after receipt of notice by the respondents/defendants the attachment warrant may be served to the garnishee i.e., the Senior Accounts officer, V and VI Stage, KTPS Paloncha, Bhadradi - Kothagudem District from and out of death benefits of Rs.7,00,000/- i.e., earned leave encashment, leave salary, bonus, arrears payable to D. Anasuya, who worked as JPA. Thus, the property is situated within the territorial jurisdiction of the trial Court. Therefore, the above two contentions of the learned counsel for the revision petitioners holds no water.

6. The other contention of the learned counsel for the revision petitioners is that the trial Court without issuing any notice and opportunity to the revision petitioners by violating the principles of natural justice, straight away passed the impugned orders. It is further contended that the trial Court failed to see that the promissory note dated 25.01.2020 alleged to have been executed by the mother of the respondents is rank forgery and without verifying the documents. The contention of the plaintiff is that the respondents have filed an application before the employer of D. Anasuya to receive death benefits of late D. Anasuya and hurried attempts to receive the death

benefits and leave the jurisdiction of the court without paying promissory note amount to the petitioner/plaintiff. It is not the case of the respondents that they did not file any such application. If the respondents/defendants succeed in their attempts, the petitioner/plaintiff may not realize the suit amount in future. Since the respondents/defendants have contended that the promissory note is forged, the onus of proving the same is on them and such burden can be discharged by the respondents/defendants at the time of trial. By the time, the trial begins, there is every chance of respondents/defendants claiming the death benefits of their deceased mother and thereafter there will not be any probability to the petitioner/plaintiff for claiming the suit amount from such death benefits of deceased borrower. It is to be seen that the trial Court has directed the Bailiff that only after failure of the respondents/defendants to furnish security to the suit amount, the warrant may be served on the garnishee i.e., the employer of deceased mother of the respondents. At this stage, even the petitioner/plaintiff has no right or authority to claim or withdraw the said amount. After receipt of the notice, if the respondents/defendants, fail to furnish any security as directed by the trial Court, the Bailiff would proceed ahead in serving warrant of attachment on the garnishee i.e., the employer of

respondents' mother with an intention to safeguard and protect the death benefits of its employee. Thus, the contention of the respondents/defendants that the trial Court passed the impugned order without issuing any notice to them is unsustainable.

7. The learned counsel for the revision petitioners/defendants contended that the execution court failed to follow the Rule 35 of the Agency Rules and passed the attachment order of immovable property situated in agency area of the petitioner is bad in law. In support of this contention, the learned counsel for the revision petitioners relied upon a decisions of the High Court of Andhra Pradesh in **Puligujju Vasantha Rao v. City Union Finance Limited, Bhadrachalm, represented by its authorized signatory¹, P. Ramakrishna And another v. M/s. Shriram City Union Finance Limited, Bhadrachalam represented by its Authorized Signatory and GPA Holder V. Vasudeva Rao², Madakam Venkateswara Rao and others v. Subordinate Judge, Kothagudem and another³**. The learned counsel for the revision petitioners further relied upon a decision of the Honourable Supreme Court in **Nagarjuna Grammena Bank and others v. Medi Narayana**

¹ 2013 (2) ALT 263

² 2013 93) ALT 143

³ 2000 AIHC 3871

and others⁴, wherein it was observed that jurisdiction of the Civil Courts functioning in the schedule areas from 1972 onwards as illegal and void. However, as stated supra, in view of G.O.Ms.No.64, dated 01.06.2022 of Law (LA.LA & J – Home – Courts.A2) Department issued by the Government of Telangana, the trial Court has power to exercise its jurisdiction in Palvancha, where the plaintiffs, defendants and the office of deceased mother of the defendants are residing. Hence, it cannot be said the trial Court has no jurisdiction to pass the impugned order.

8. Furthermore, In **Karam Babu Rao v. Baddi Srisailm**⁵ this Court observed as under:

“Rule 35 of Telangana Agency Rules, 1924 applies only to the cases where the execution is in relation to attachment of immovable property situated within the agency tracts and the obvious intention behind making such stipulation is to ensure that no immovable property situated within the agency tracts is attached or sold without the same being brought to the notice of the agent. In the instant case, the subject matter is attachment of salary of the petitioner and the direction is given to the employer of the petitioner to attach the petitioner's salary subject to the provisions of Section 60 of the Code of Civil Procedure, 1908 and that the attachment does not in any manner relate to the agency tracts. Merely by reason of the petitioner working in the Agency Area, Rule 35 of the Agency Rules does not get attracted.”

9. In view of the principle laid down in the above said decision, Rule 35 of the Telangana Agency Rules, 1924 is applicable only in respect of immovable property situated within

⁴ 2013 (11) SCC 362

⁵ CRP No.1036 of 2021 decided on 17.11.2021

the agency tracts is attached or sold without the same being brought to the notice of the agent. It is pertinent to note that the property annexed to the warrant was retirement benefits of deceased mother of respondents and the same does not come under the ambit of immovable properties, as such Rule 35 of Telangana Agency Rules, 1924 do not attract.

10. In view of the above facts and circumstances, this Court is of the view that the revision petitioners failed to establish any of the grounds urged in this Civil Revision Petition. The trial Court has not committed any irregularity while passing the impugned order and thereby there are no merits in the Civil Revision and accordingly the same is liable to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 06.03.2024

Note: LR Copy to be marked.
B/o.AS