

14/12/2018

For orders,

ORDERS ON IA UNDER ORDER XXI
RULE 58 R/W SEC.151 OF CPC

The objector filed the above application to raise the attachment order passed by this Court in respect of the schedule property in the interest of justice.

2. In the annexed affidavit, it is stated that this Court has issued a prohibitory order under Order XXI Rule 54 of Code of Civil Procedure prohibiting and restraining the Judgment Debtors R.Muniraju from transferring or charging the property described in the notice schedule property. The objector is the absolute owner in possession and enjoyment of the said property. The said property was originally owned by his mother Smt.Rajamma and she transferred the property by way of Gift Deed dated 19/11/2004. Mr.R.Muniraju executed a release deed dated 20/03/2005 in his favour. At At the time of registration of the said release deed, the Sub-registrar impounded the document on the ground that the said release deed should be treated as sale deed and stamp duty should be paid on the value of the property treating it as sale deed. A proceeding under Sec.45A was initiated under No.46A(5)2/2008-09 before the District Registrar,

Rajajinagar, Bangalore District. An order was passed by the District Registrar in the said proceeding holding that deficit stamp duty of Rs.34,038/- has to be paid. As per the order of the District Registrar, he has paid deficit stamp duty of Rs.34,038/- and registration charges of Rs.3,420/-. Thereby the above proceedings initiated by the District Registrar was closed. Therefore, the said release deed has been treated as absolute conveyance of the property in his favour and became final. After registration of the said deed, he got the khatha transferred in his name as per the khatha endorsement dated 20/05/2006 issued by Bruhat Bengaluru Mahanagara Palike. He is in possession and enjoyment of the property without any interruption from anybody as absolute owner. The Decree Holder has no right to attach the property for recovery of the alleged amount from the Judgment Debtor. The Judgment Debtor has no manner of right, title and interest over the property. Hence, prayed to raise attachment and release the property from attachment and to pass an order by allowing the application.

3. The Decree Holder counsel filed objections to the said application stating that the application is not maintainable in the eye of law. The property in question is the execution property

of Judgment Debtor and he has acquired the same under the registered Gift Deed dated 19/11/2004 executed by his mother. In this view of the matter, the objector did not have any right in the property and in this background the Judgment Debtor executing any release deed in favour of the objector does not arise and the objector does not get any right over the property on the basis of the alleged release deed executed by the Judgment Debtor dated 20/03/2005. The endorsement dated 20/05/2006 produced by the obstructor is a fabricated document as the Decree Holder has already produced khatha certificate and khatha extract dated 21/06/2013 issued by the corporation which indicate that even as on the date, the property stands in the name of the Judgment Debtor. The tax paid receipt produced do not pertain to the property in question. Hence, prayed that dismiss the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application under Order XXI Rule 58 R/w Sec.151 of Code of Civil Procedure filed by the objector deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Negative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The Decree Holder has filed the above petition for recovery of amount of Rs.11, 56, 262/- as per the judgment and decree in O.S.No.1132/2010 dated 26/02/2013. on perusal of the ordersheet, it reveals that no attachment order is passed against the Judgment Debtor in respect of the schedule property till today. Hence, question of release of property from the attachment does not arise at all. Hence, objector has not made out reasonable grounds to allow the application. Accordingly, I answer point No.1 in the Negative.

7. **Point No.2 :** In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.II under Order XXI Rule 58 R/w Section 151 of CPC filed by the objector is herewith rejected.

No order as to costs.

Call on 19/01/2019.

(Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in open court this the 14th day of December, 2018.).

(NAGAVENI)
V ADDL.CITY CIVIL JUDGE

BANGALORE