

ORDERS ON OBJECTION TO THE ATTACHMENT

On 02.11.2023 father of JDrs No.1 and 2 by name K.Annayya Sherigar had appeared before this Court and filed a letter stating his objections to the attachment order passed by this Court. The said letter was treated as an application under Order XXI Rule 58 of CPC and taken up for adjudication.

2. Although the said K.Annayya Sherigar filed the letter of objection, but did not appear to substantiate his contentions.

3. The manager of Dhr society has entered the witness box as PW1 and she has denied the contentions taken up by K.Annayya Sherigar in the aforementioned letter. It is specifically contended that in the Municipal Extract as well as the Sale deed it is clearly forthcoming that the house bearing D.No.2-86B belongs to Amith Sherigar who is the brother of JDr's no.1 and 2. It is alleged that the said Annayya Sherigar who was the past president of their society had himself advanced loan in the name of his son JDr No.1. At present he himself is obstructing the execution of the award on behalf of JDr No.1. It is alleged that the said house belongs to JDr No.1 and it is purchased by him in the name of his own brother Amith and his brother's wife Shwetha to defraud the creditors.

4. The said evidence of PW1 has gone unrebutted. Nevertheless upon perusal of the document produced by Annayya Sherigar it is

forthcoming that the house bearing D.No.2-86B situated at Sy.No.163/2A1 of 76-Badagabettu Village, is purchased by Amith and his wife Shwetha on 21.08.2018, much prior to the filing of the present petition. There is no document to suggest that the JDr No.1 himself had purchased the said property in the name of his brother Amith and sister in law Shwetha.

5. Without there being sufficient proof regarding benami transaction, the DHr cannot seek attachment of the movables found in D.No.2-86B belonging to Amith and Shwetha. It is for the DHr society to take effective steps against the JDr no.1 and 2. There is substance in the objection raised by K. Annayya Sherigar who is the father of JDr No.1 and 2. The records would go to show that the Jdr No.1 and 2 have gone abroad and no effective steps are being taken by DHr.

6. If the objector Annayya Sherigar who was the past president of DHr society had advanced loan to his own son JDr no.1 and at present he himself is obstructing the execution of the award, then it is for the DHr society to take necessary criminal action against the said person. In the present execution petition the said allegation of DHr society cannot be adjudicated upon. In the given facts, the DHr society cannot seek for attachment of movables found in D.No.2-68B which is not standing in the name of JDrs no.1 and 2.

Hence, the movables mentioned in the Jabitha are not liable for attachment. Hence, this Court deems fit to pass the following;

ORDER

It is held that the movables found in D.No.2-86B standing in the name of Amith and Shwetha Sundar Salian is not available for attachment.

Call on finally for effective step against JDrs no.1 and 2 by : 29.01.2024

(Vignesh Kumar)
Prl. Sr. Civil Judge and CJM.,
Udupi.

