

EP No.90/2019

in

OS 14/2012

(CNR No.TNKK01-005659-2019)

16.03.2023

Order pronounced.

Records perused.

The arguments of the learned counsel for the petitioner/decree-holder was carefully considered by this court.

The execution petition is filed by the petitioner/decree-holder under Order XX1, Rules 34, 66 and Section 151 of CPC, for attachment and sale of the petition schedule property belongs to the respondents/respondents in order to realize the EP amount.

It is the contention of the learned counsel for the petitioner that the petitioner herein is the decree-holder in the suit. The petitioner filed a suit in OS 14/2012 before this court for recovery of money from the respondents and the

said suit was decreed directing the respondents to pay a sum of Rs.4,00,748.50/- towards the cost of the suit. Since the respondents/JD has not paid the decree amount, the petitioner/decree-holder filed this execution petition for sale of the immovable property belonged to the respondents/JD. An order of attachment of the schedule of the 1st respondent/JD's property was passed by this court in IA 70/2012, dated 24.09.2012 and the schedule of property was attached and the same is also reflected in the encumbrance certificate filed by the petitioner/decree-holder along with the execution petition. Hence, the sale of the schedule of property may be ordered.

Though the respondents filed counter stating that the petition is not

maintainable either in law or on facts. The petitioner/plaintiff has filed the suit for specific performance of contract. The suit was ex-parte decree on 01.03.2019. The respondents/defendants have filed set aside ex-parte decree petition as numbered in I.A.No.2/2019 before this court is pending. But at the time of enquiry, there is no representation on the side of the respondents. Hence, the respondents were called absent and set ex-parte on 10.12.2021.

A perusal of the records reveals that the petitioner/decree-holder obtained a decree in his favour on 01.03.2019 against the respondent for a sum of Rs.4,00,748.50/- towards the cost of the suit. Even after the decree also, the respondent failed to pay the decree amount with interest and costs. Under the said circumstances, this court

finds that the petitioner/decree-holder is entitled to bring the schedule property for sale in order to realize the EP amount. Hence, this court directs the Amin of this court to bring the immovable property mentioned in the execution petition for sale. Sale Papers by 07.06.2023.

Sd/-
P.D.J.