

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.1442 of 2014

ORDER:

Heard Sri P.Rajesh Babu, learned counsel for the petitioners and Sri N.Siva Reddy, learned counsel for respondent.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.03-04-2014 in E.P.No.75 of 2010 in O.S.No.45 of 2000 for sale of E.P. schedule property.

3. Learned counsel for the petitioners raised three contentions:

1) that there was a settlement between the parties on 16-06-2013 whereunder the respondent-decree holder agreed to receive a sum of Rs.1.00 lakh in all towards satisfaction of the decree in this suit as well as the decree in O.S.No.32 of 2011;

2) that fresh proclamation of the sale should be given under Order 21 Rule 69 (2) CPC since there is already an adjournment of sale beyond 30 days and

3) that for an E.P. amount of Rs.87,931/-,

property worth about Rs.10.00 lakhs is being sold.

4. Learned counsel for the respondent on the other hand contended that counter affidavit was filed in the E.P. by the petitioners where no mention is made of the alleged agreement dt.16-06-2013 between the respondent and the petitioners and that the said counter affidavit was filed on 21-06-2013 subsequent to the alleged settlement on 16-06-2013. He further contended that there was no previous proclamation made and that proclamation was directed to be issued for the first time in the impugned order dt.03-04-2014 and therefore Order 21 Rule 69 (2) CPC has no application. As regards the third issue, learned counsel for the respondent stated that the petitioners may be permitted to raise the said contention in the Court below.

5. Since the petitioners had not raised any contention that the matter has been settled pursuant to an agreement between parties dt.16-06-2013 in the Court below in the counter affidavit filed by them on 21-06-2013, they are not entitled to raise this contention in this Court for the first time without raising it in the trial Court.

6. As regards the contention of the learned counsel for the petitioners that fresh proclamation should be issued under Order 21 Rule 69 (2) CPC is concerned, no material is placed before this Court that there was an earlier sale proclamation and that the sale was adjourned

beyond 30 days. Therefore, this contention is also rejected.

7. Order 21 Rule 64 states that the Court executing the decree may order only such property or portion of property to be sold as it deems necessary to satisfy the decree.

8. In the present case, E.P.No.75 of 2010 has been filed to recover Rs.87,931/-. Even according to the decree holder, the value of the E.P. schedule properties is Rs.1,50,000/-, the Amin's value as indicated to the docket order dt.03-04-2014 is Rs.7.00 lakhs and the Sub Registrar's valuation is also mentioned therein as Rs.10.00 lakhs.

9. In view of this, the Court below shall keep in mind the provisions of Order 21 Rule 64 CPC and proceed further in the matter.

10. The Civil Revision Petition is disposed of with the above directions. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

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