

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.629 of 2013

Dated 16-11-2015

Between:

Putta Sivanandini.

...Petitioner.

And:

Putta Venkateswarlu and others.

...Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.629 of 2013

JUDGMENT:

This appeal is preferred challenging the judgment dated 12-6-2008 in A.S.No.6 of 2007 on the file of Principal Senior Civil Judge, Narasaraopet whereunder orders in E.A.No.2 of 2005 in E.P.No.198 of 2003 in O.S.No.124 of 2002 dated 13-7-2006 are confirmed.

Advocate for appellant contended that the following are the substantial questions of law that require determination by this court.

- a. *Whether the judgment and decree of a court can be held as valid when the same is passed without considering the evidence and material on record?*
- b. *Can a Court can take an adverse inference when the JDr. is observing the Court proceedings after remaining ex-parte in the proceedings?*
- c. *Can a party can brought the property belonging to the brother of the JDr to sale admittedly when the brother of the JDr. is a sharer to the property?*
- d. *Can a Court can overlook the compromise entered into between the DHr. and the claimant when the same is being objected by an Auction purchaser? Can an Auction Purchaser can claim the auctioned property when the decree debt is paid and when the*

claimant is ready and willing to deposit the poundage amount with costs.?

As seen from the material, appellant herein claims property through a settlement dated 20-5-2002 which is executed long after attachment. Property was attached on 2-5-2002 but the settlement of property was on 20th May, 2002. Both trial court and appellate court have elaborately considered the material evidence and held that there are no merits in the claim application and dismissed claim petition.

Advocate for respondents submitted that the mother and sister of claimant also filed claim applications in E.A.No.353 of 2004 and 354 of 2004 and both these petitions were also dismissed on merits.

One of the contentions of advocate for appellant is that as per Order XX1 Rule 59 (b) C.P.C., the court shall not confirm the sale during the pendency of the appeal but in this case, the sale was confirmed and therefore, that is a substantial question of law that has to be decided by this court.

As seen from the provision, Order XX1 Rule 59 (b) C.P.C., it is in respect of stay of sale. It may be useful to read the provision which is as follows:

59. Stay of sale:-

“Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-

(a) xxxx

(b) “If the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.”

So the above provision also contemplates that such order may be made subject to such terms and conditions as to security or otherwise as the court thinks fit and therefore, the objection that the court is not empowered to confirm the sale during pendency of the sale cannot be accepted.

Advocate for appellant cited a ruling of Supreme Court in **KANCHERLA LAKSHMINARAYANA v. MATTAPARTHI SYAMALA**

AND OTHERS () for the proposition that attachment of immovable property in adjudicating objection, the court has to consider the collusive nature of the decree but this proposition is not applicable to this case. Simply because it is an ex parte decree, it cannot be treated as collusive unless a specific plea is in that regard and material evidence is produced in respect of such plea. The other contention raised by the appellant is that subsequent to the sale, both J.Dr. and D.Hr. have compromised, therefore, the court cannot overlook that compromise but that cannot be a ground. Simply because parties to the lis have compromised a third party who participated in court auction and purchased property cannot forego his rights which are conferred to him under the sale.

On a scrutiny of material, I am of the view that there is absolutely no question of law involved in this appeal leave alone substantial question of law.

Therefore, this Second Appeal is dismissed at the admission stage. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 16-11-2015.

Dvs.

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