

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.12682 of 2015

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ORDER : (per Hon'ble Sri Justice R.Subhash Reddy)

This writ petition is filed by the petitioner seeking *Mandamus* declaring the action of the 1st respondent in selling the joint family property of petitioner and respondent No.3 in favour of respondent No.4 by conducting auction on 11.4.2014, as arbitrary and illegal and consequently sought a direction to set aside the sale certificate dated 26.4.2014 issued by the 1st respondent in favour of 4th respondent in respect of the property admeasuring 462 square yards situated in Sy.No.17/1 (Part) of Cherukupally Village, Bhogapuram Mandal, Vizianagaram District, including machinery and other movables mentioned in the said sale certificate.

2. The case of the petitioner is that he along with the 3rd respondent, who is his paternal uncle, is the co-owner of the land admeasuring 462 square yards situated in Sy.No.17/1 (Part), Cherukupally Village, Bhogapuram Mandal, Vizianagaram District. Admittedly, the said property stood in the name of the 3rd respondent, who has gifted the said property to his daughter, by name Smt. Seerapu Varalakshmi, who is the Proprietrix of the 2nd respondent-M/s. Lakshmi Aqua Industry. Smt. Seerapu Varalakshmi, being the Proprietrix of the 2nd respondent, has obtained loan from the 1st respondent-Bank by mortgaging the subject property and the 3rd respondent stood as guarantor to the 2nd respondent by mortgaging

the other properties towards security for the loan arranged by the 1st respondent-Bank. As the 2nd respondent has defaulted in repayment of loan amount, the 1st respondent-Bank has initiated proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"). On coming to know about the issuance of e-auction notice dated 10.3.2014, which was published in "The Hindu" Daily Newspaper on 11.3.2014, though the petitioner has informed the 1st respondent-Bank about mortgaging of joint family properties, the 1st respondent-Bank has proceeded with the auction and sold the property in favour of 4th respondent in the auction conducted on 11.4.2014 and sale certificate dated 26.4.2014 was issued in her favour. Aggrieved by the same, the petitioner has filed the present writ petition.

3. Having heard Sri E. Venkata Reddy, learned counsel for the petitioner as well as Sri B.S. Prasad, learned Standing Counsel for 1st respondent-Bank, we have perused the material on record.

4. Though the petitioner claims that he is the co-owner of the subject property along with the 3rd respondent, the same cannot be decided in a writ petition invoking the powers under Article 226 of the Constitution of India. As it is stated that the petitioner along with his brothers and sisters has already filed suit in O.S.No.223 of 2014 on the file of XII Additional District Judge, Visakhapatnam, seeking partition of the joint family properties and other reliefs, against respondent Nos.1 to 3, if the petitioner feels that he is entitled for a share in the subject property, he can workout his remedy in the aforesaid suit. In view of pendency of the suit, at this stage, it is not possible to record a finding that the petitioner is the co-owner of the subject property along with the 3rd respondent, who gifted the said property to his daughter-Smt. Seerapu Varalakshmi, which property was sold pursuant to the auction conducted on 11.4.2014.

5. For the aforesaid reasons, we are not inclined to grant the

relief sought for in this writ petition.

6. Accordingly, this writ petition is dismissed, at the admission stage. However, it is made clear that the Court below shall dispose of the suit O.S.No.223 of 2014 on merits and in accordance with law, uninfluenced by any of the observations made in this order. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

16.06.2015.

Msr

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