

THE HON'BLE SRI JUSTICE K.C. BHANU

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CIVIL REVISION PETITION No.5442 OF 2012

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC') is directed against the Order and decree, dated 04.10.2012, in Execution Application No.444 of 2008 in Execution Petition No.51 of 2000 in Original Suit No.130 of 1998 passed by the Junior Civil Judge, Macherla, Guntur District.

2. The aforesaid Execution Application was filed by the petitioner/judgment debtor under Order XXI Rule 90 and Section 151 CPC seeking to set aside the sale, dated 09.06.2008, on the ground that the description of the property sought to be sold in the auction has not been specifically mentioned and the valuation of the property is shown as Rs.75,000/-, whereas the actual market value of the property is more than Rs.11,00,000/-. The said petition was dismissed holding that the petitioner did not raise any objection before proclamation of sale was drawn up as contemplated under Order XXI Rule 90(3) CPC.

3. Learned counsel for the petitioner contended that the value of the property shown in the auction is very meagre i.e., Rs.75,000/-, but as per the basic value register of the office of the Sub-Registrar, the value of the property is more than Rs.11,00,000/- and that the details of the property have not been mentioned in the proclamation of sale, therefore, he prays to set aside the sale, dated 09.06.2008.

4. On the other hand, learned counsel for respondent No.1 contended that before the date on which the proclamation of sale was drawn up, the judgment debtor has not raised any objection, that there is no material irregularity in

conducting the sale; that a categorical finding has been recorded by the Executing Court and that the procedure prescribed under Order XXI Rule 90(3) CPC has not been followed by the judgement debtor and therefore, he prays to dismiss the revision petition.

5. There cannot be any dispute that the proclamation of sale was drawn on 12.07.2000, the sale was conducted by way of public auction on 09.06.2008 and in the said sale, the 2nd respondent herein became the highest bidder. The two contentions raised by the learned counsel for the petitioner are that the description of the property has not been specifically shown in the proclamation of sale and that the value of the property is shown far less than the value as found in the basic value register of the Sub-Registrar concerned.

6. Order XXI Rule 90 CPC reads as follows:

“90. Application to set aside sale on ground of irregularity or fraud.- (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.- The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.”

As seen from the above provision, it is clear that the sale of property in

execution of the decree can be set aside only on the ground of a material irregularity or fraud in publishing or conducting the sale.

7. Admittedly, the case on hand does not fall under the second category viz., fraud in publishing or conducting the sale. The only ground available for setting aside the sale is material irregularity. Now, it has to be seen that when the decree holder has not shown the correct description of the property properly or the value is shown far less than the market value or the Sub-Registrar's value, whether it would amount a material irregularity. Sub-Rule (3) of Rule 90 of Order XXI CPC controls sub-Rule (1) of Rule 90 CPC. Even if there is a material irregularity, sale cannot be set aside when such a plea has not been taken on or before the date on which the proclamation of sale was drawn up. Admittedly, the petitioner has not taken up these two contentions raised on or before the proclamation of sale was drawn up. Therefore, even assuming for a moment that it amounts to a material irregularity, for that reason sale of the property in auction cannot be set aside unless those grounds have been specifically taken on or before the date on which the proclamation of sale has been drawn up. So, precisely for that reason, the Executing Court by invoking Order XXI Rule 90(3) CPC has dismissed the application and that order needs no interference by this Court as there is no illegality in passing the said Order. The Civil Revision Petition is devoid of merit and the same is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C. BHANU

Date:17.04.2015

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