

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No.2217 OF 2015

ORDER:

This revision is filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') to set aside the order passed in E.P. No.73 of 2014 in O.S. No.6 of 2014 by the Senior Civil Judge, Bodhan, ordering proclamation of sale, on the ground that suit summons were not served on the defendant and notice in execution petition were also not served, but straight away ordered proclamation.

As seen from the Execution Petition, the decree was passed for recovery of Rs.7,28,598/- together with subsequent interest and costs. The suit schedule property is agricultural land of Ac.0.24 gts., in S.No.91/U out of Ac.1.08 gts., within the specific boundaries. However, the property was attached before Judgment by filing application under Rule 5 of Order XXXVIII of the Code and it was made absolute at the time of passing the decree.

The only contention of the petitioner before this Court is that no suit summons and notice in Execution Petition was served, hence, ordering proclamation is illegal. The executing court cannot go beyond the Decree and examine whether the suit summons served or not during pendency of the Suit before the trial court. But so far as the notice in execution petition is concerned, the property was already attached before the judgment by filing application under Rule 5 of Order XXXVIII of the Code and brought the property to sale to realize the decree debt under Rule 64 of Order XXI of the Code. When the property already attached before the judgment is made absolute at the time of passing Decree, no notice needs to be ordered except to settle the terms, but it is not the case of the petitioner before this Court. Therefore, I find no error much less legal infirmity warranting interference of this Court exercising the jurisdiction under

Section 115 of the Code. Consequently, the petition is deserves to be dismissed.

In the result, the petition is dismissed. However, the observation made in the Order will have no bearing on the pending matters for realization of the decree debt before the executing court and the executing court is requested to decide the matters pending before it uninfluenced by this court's observation.

M. SATYANARAYANA MURTHY, J

18.12.2015

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