

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1146 of 2014

ORDER :

This Revision is filed challenging the docket order dt.28.03.2014 of the Principal Senior Civil Judge, Anantapur in E.P.No.51 of 2011 in O.S.No.222 of 2007 directing certain steps to be taken in execution of the decree in O.S.No.222 of 2007 on basis of a mortgage.

2. The counsel for petitioner states that a preliminary decree obtained in a mortgage suit is sought to be executed without even applying for a final decree.
3. As per the decree dt.27.02.2009 in O.S.No.222 of 2007, in default of payment by petitioner as per the preliminary decree, the respondent was directed to apply to the Court for a final decree for sale of the mortgage property. Admittedly, no final decree has been passed.
4. Although the counsel for respondent sought to rely on the judgment in **Devabathina Paradesaiah (died) and others v. State Bank of India, Kavali** in support of his plea that a preliminary decree in a suit can be executed even if there is no final decree, recently in **Lanka Babu Surendra Mohana Benarji v. Canara Bank, Unguturu**, this Court has held that such judgment is *per incuriam* and is in good law.
5. Therefore, the Civil Revision Petition is allowed. It is held that E.P.No.51 of 2011 filed by respondent to execute the preliminary

decree is not maintainable unless the respondent/Decree Holder obtains a final decree. No order as to costs.

6. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.09.2015

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