

THE HON'BLE SRI JUSTICE K.C. BHANU

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CIVIL REVISION PETITION No.4861 OF 2014

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 07.10.2014, in Execution Application No.315 of 2013 in Execution Petition No.25 of 2012 in Original Suit No.145 of 2010 passed by the Principal Senior Civil Judge, Tenali.

2. The aforesaid Execution Application was filed by the petitioner/judgment debtor No.2 under Order XXI Rule 90 CPC seeking to set aside the sale conducted on 30.04.2013, on the ground that there is material irregularity in conducting the sale; that the decree holder by colluding with the bidders brought the property to sale by suppressing the fact that by the date of proclamation of sale, the property was under attachment and the said fact has not been mentioned in the proclamation of sale; that description of the property sought to be sold in the auction is not correct and the value of the property is far less than the market value. 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 property worth of Rs.30,00,000/- was sold away for meagre amount of Rs.14,25,000/- in view of wrong description of property; and therefore, he prays to set aside the sale, dated 09.06.2008.

4. On the other hand, learned counsel for respondents 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 and therefore, he prays to dismiss the revision petition.

5. There cannot be any dispute that the proclamation of sale was drawn on 04.03.2013, the sale was conducted by way of public auction on 29.04.2013 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 was wrongly mentioned in the proclamation of sale and the value of the property was shown far less than the market value.

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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