

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.4889 OF 2014

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ORDER:

This Civil Revision Petition is filed under Section 115 CPC by the judgment debtor in O.S.No.91 of 2003 on the file of the Senior Civil Judge, Nuzvid, aggrieved by the order dated 04.12.2014 passed in E.A.No.129 of 2014 in E.P.No.8 of 2006.

By the aforesaid order, the trial court has ordered to deliver possession of the house property which is sold in the execution proceedings by breaking open its lock.

One Smt. Suri Saraswathi filed O.S.No.91 of 2003 against the petitioner herein on the file of the Senior Civil Judge, Nuzvid for recovery of a sum of Rs.1,53,250/- based on a promissory note. During pendency of the suit, house property bearing D.No.6-28 situated at Agiripalli village and Mandal was attached under Order 38 Rule 5 CPC. The number of the said property was re-numbered as D.No.6-31. The suit was decreed as early as on 20.07.2005 and the same has become final.

In execution proceedings, in E.P.No.8 of 2006, wife of the petitioner herein has filed claim petition vide E.A.No.35 of 2007 claiming that the attached property was gifted to her by way of registered gift deed. The said E.A., was dismissed and confirmed by the VII Additional District Judge, Vijayawada vide A.S.No.250 of 2008 and the same has become final. In execution proceedings, to execute the decree, the said house property which was attached was sold in auction on 19.12.2012 and it was knocked down in favour of the respondent herein for Rs.6 lakhs. On deposit of the balance amount, after adjusting decretal amount, sale certificate was issued on 01.05.2014. In execution proceedings, to avoid delivery of possession, when the

house property was locked, the impugned order came to be passed by the executing court to break open the lock of the house property.

Heard Sri Siva S. Lanka, learned counsel for the petitioner and Sri V.V. Prabhakara Rao, learned counsel for the respondents and perused the material on record.

It is submitted by the learned counsel for the petitioner that entire sale proceedings were initiated by fraud, as such, the impugned order, which is passed to deliver possession of the house property to the respondent, by breaking open the lock, is fit to be set aside.

On the other hand, it is submitted by the learned counsel for the respondent that O.S.No.91 of 2003 was decreed as early as on 20.07.2005 and the same has become final; to delay the execution proceedings, the wife of the petitioner herein filed claim petition based on the gift alleged to have been executed by the petitioner and the same ended in dismissal and confirmed vide A.S.No.250 of 2008. It is further submitted that, to avoid delivery of possession, when the house property was locked, the impugned order is passed on the request of the respondent; inasmuch as sale has become final and sale certificate was also issued in favour of the respondent, without questioning the sale, there are no grounds for the petitioner to seek interference with the impugned order.

In this case, it is to be noticed that O.S.No.91 of 2003 for recovery of money filed against the petitioner by the original decree holder, based on promissory note, was decreed on 20.07.2005 and the same has become final. In execution proceedings, wife of the petitioner has created hurdles by filing claim petition which ended in dismissal and confirmed vide A.S.No.250 of 2008. When auction is conducted and the house property is sold by way of auction and sale certificate is also issued, without questioning the sale by following the procedure contemplated under the Code of Civil Procedure, petitioner, who suffered the decree, cannot prevent delivery of possession of the house property. As much as sale has become final in favour of the respondent herein, I do not find any merit in this

petition which warrants interference with the impugned order.

Civil Revision Petition is devoid of merits and is accordingly dismissed. No order as to costs. As a sequel, miscellaneous petitions if any pending stand closed.

R. SUBHASH REDDY, J

April 17, 2015

MRR