

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

CRP No.4863 of 2015

Oral Order :

This Civil Revision Petition has been filed challenging the order of rejection of Execution Application in G.L.No.1353 in un-numbered E.A. in E.P.No.88 of 2006 in O.S.No.453 of 2004 on the file of the Court of the Prl. Junior Civil Judge, Avanigadda, Krishna District.

The petitioner herein is the judgment debtor in the execution proceedings, the respondent is the decree holder/auction purchaser in the main E.P. The petitioner submits that she is the absolute owner of the wetland in an extent of Ac.0.57 cents in R.S.No.805/6, Ac.0.05 cents in R.S.No.805/5, Ac.0.23 cents in R.S.No.806/6, Ac.0.08 cents in R.S.No.806/7 and Ac.0.23 cents in R.S.No.806/8 and total extent of Ac.1.16 cents situated at Nukalavaripalem village, Challapalli Mandal and that it was originally sold by her husband in her name from Bondalapati Suryamba under registered sale deed dated 26.8.1993. Ever since the date of the purchase the petitioner is in possession and enjoyment of the petition schedule property. According to the petitioner in view of the disputes between her and her father-in-law she was residing separately and therefore she could not have the knowledge about the suit proceedings which were

decreed against her. It was further contended that her father-in-law lost all earnings and indebted to others, the husband of the petitioner intended to sell away the schedule property to clear the debts of her father-in-law, when the petitioner refused the proposal of her husband, as such, her father-in-law bore grudge against her and colluded with the husband of the respondent and created a promissory note in favour of the respondents, without the knowledge of the petitioner. Further, petitioner's father-in-law received the sale notice on behalf of the petitioner without knowledge about the same to the petitioner, thereafter sale was knocked down for a very less amount than the market value of the petition schedule property. According to the petitioner E.P. schedule property was attached before judgment, as such, she was not served with any notice as required under Rule 54(1)(A) Order 21 of CPC and hence she sought for setting aside the sale stating that she is ready and willing to pay the entire warrant amount together with subsequent interest and all expenses incurred by the decree holder in conducting of sale.

Learned counsel for the petitioner submitted that the Court below failed to observe that the counsel for the petitioner has submitted his arguments only on the maintainability of the Execution Application and it has posted the matter to orders, but ultimately by its impugned order has rejected the entire execution application on

merits, even though the counsel for the petitioner has not argued on merits. Learned counsel for the petitioner submitted that delivery of the possession was given to the respondent is symbolic delivery of possession and not the physical delivery of possession of the property and that the court below ought to have given an opportunity by numbering the application. In support of his contention, he relied on the judgment reported in **DEVURI APPALA RAJU V. KOLLI RAMAYAMMA AND OTHERS** ^[1]. That case has no application to the facts and circumstances of the present case.

The Court below while advertng to the issue raised by the petitioner, by its elaborate order categorically observed that when the court attached the property before judgment, the court can directly order notice under Rule 66, Order 21 CPC to the judgment debtor and the same was received by the father-in-law of the petitioner. Admittedly E.P. schedule property was attached in the suit. No evidence was adduced by the petitioner to show that the petitioner has any disputes with her father-in-law except mere allegation. Curiously, after receipt of the notice under Rule 66 Order 21 CPC, the petitioner herein filed Vakalat on behalf of the petitioner/Judgment debtor in the main E.P. proceedings. The petitioner also filed counter and after hearing both sides the court below passed orders on the sale notice on 12.2.2007.

Thereafter the matter was posted for settlement of terms on 13.3.2007. The petitioner did not challenged the orders of the court below dated 12.2.2007. Thereafter auction was conducted after issuance of proclamation and sale. The auction purchaser paid the 3/4th amount and the matter was posted for confirmation of sale to 22.6.2007. After elaborate enquiry, including dismissing the claim petition, sale was confirmed on 6.4.2009 and sale certificate was also issued on 23.7.2007. Thereafter the auction purchaser filed E.A.No.116.2009 and 117/2009 for delivery of E.P. schedule property, the same was executed by Amin and delivered by the property to the auction purchaser and delivery was recorded by the Court below on 1.8.2014. Considering the above facts and circumstances, the court below rightly rejected the petition. Accordingly, I do not see any merit in the Civil Revision Petition.

The Civil Revision Petition is accordingly dismissed at the admission stage. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE G.

CHANDRAIAH

Dt:14-12-2015

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