

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.891 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.06-03-2014 in unnumbered E.A.No. /2013 in E.P.No.37 of 2009 in O.S.No.54 of 2001 of the Senior Civil Judge, Puttur.

2. Although this Revision had earlier been disposed of on

25-04-2014, the said order has been recalled on 10-10-2014 in Rev.C.R.P.M.P.No.4742 of 2014 and the C.R.P. has since been restored to the file of this Court.

3. Heard Sri P.V.Vidya Sagar, learned counsel for petitioner and Sri T.C.Krishnan, learned counsel for respondent Nos.2 to 4. None appears on behalf of 1st respondent even though notice has been served.

4. The 1st respondent had obtained a decree against respondent Nos.2 to 4 on the basis of a simple mortgage on 20-02-2004. Thereafter final decree was also passed on 30-01-2008 in the suit.

5. Subsequently E.P.No.37 of 2009 was filed by 1st respondent against respondent Nos.2 to 4 for recovery of amount covered by the decree.

6. At that stage, the petitioner herein, who claimed to have purchased half portion of E.P. schedule property in E.P.No.37 of 2009 under a sale deed dt.25-11-1991, filed E.A.No. /2013 contending that the Court below should apply Order XXI Rule 64 C.P.C. and sell only half of the E.P. schedule property other than the half purchased by him. He also referred to O.S.No.15 of 2011 filed by him on the file of the Senior Civil Judge, Puttur for declaration of his title and permanent injunction in respect of half of the E.P. schedule property in E.P.No.37 of 2009 purchased by him, pointing out that the sale deed obtained by him on 25-11-1991, had been filed in that suit.

7. The Court below however rejected the said application by impugned order passed on 06-03-2014. It observed that the petitioner is a third party to the suit and application under Order XXI Rule 64 C.P.C. to exclude some of the property being sold in execution of a mortgage decree and to sell the remaining property, cannot be maintained by him. It observed that if really half of the E.P. schedule property or 1/4th of the E.P. schedule property is sufficient to satisfy the decree, the property of

petitioner can be excluded but he will not get any such direction.

8. Challenging the same, this Revision is filed.

9. On 28-03-2014, this Court ordered notice before admission and granted interim stay subject to condition of petitioner depositing 50% of the decretal amount together with interest and costs within four weeks from the date of receipt of a copy of the said order.

10. Learned counsel for petitioner contended that the petitioner had purchased half of the E.P. schedule property on 25-11-1991 and that the suit O.S.No.15 of 2011 filed by petitioner before the Senior Civil Judge, Puttur was dismissed, but an appeal preferred against the said judgment is pending. He therefore contended that in the event he were to succeed in the appeal, he would be deprived of the half share of the E.P. schedule property in E.P.No.37 of 2009 and if the said half share purchased by him is not excluded, it would cause serious prejudice to petitioner.

11. I am unable to agree with the said submission. As on date, the decree in O.S.No.15 of 2011 of the Senior Civil Judge, Puttur refusing the relief of declaration of title to petitioner in respect of the very same half of E.P. schedule property in E.P.No.37 of 2009 is subsisting. Only if the

said decree is set aside in appeal, the petitioner can claim right, title and interest in the E.P. schedule property. Therefore in anticipation of petitioner succeeding in that appeal filed against the judgment in O.S.No.15 of 2011, the petitioner cannot claim any relief in E.P.No.37 of 2009 in O.S.No.54 of 2001.

12. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

13. However, the petitioner is permitted to take back the money deposited by him pursuant to the interim order dt.28-03-2014 and 25-04-2014 passed in this Revision.

14. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 03-09-2015

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