

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.5216 of 2005

ORDER:

Heard Mr. N. Sridhar Reddy for petitioner and learned Assistant Government Pleader for respondents 1 and 2. No representation for the third respondent.

2. Petitioner challenges notice dated 15.02.2005 issued in Form Nos.8 and 9 of the A.P. Cooperative Societies Rules to auction the following properties:

Mandal	Village	Name of defaulter	Description of immovable property to be sold	Estimated extent	The amount for the recovery of which the sale is ordered	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Andole	Kodekal	Sri K. Vittal Reddy	Sy.Nos 192 193 295	149 Guntas	Rs:782263 + Future interest thereon	

3. The issue substantially arises under the A.P. Cooperative Societies Act, 1964 (for short 'the Act') read with the A.P. Cooperative Societies Rules, 1964 (for short 'the Rules').

4. The case of petitioner is that respondents 1 and 2 under assumed and mistaken impression of the ownership of the subject matter had issued the impugned sale notice. According to her, through Gift Settlement Deed dated 03.06.1998, the father of petitioner, at the time of her marriage with K. Vittal Reddy, has settled, the subject matter of the property together with a few other properties in her favour. The said property was and is the exclusive property of petitioner and prior to execution of the Gift Settlement Deed the ownership of the subject matter was with petitioner's father. In other words, the husband of petitioner does not have any right or any claim in the subject matter. Therefore, according to her, for any act of misappropriation or otherwise, the property of petitioner cannot and could not be auctioned. In support of her case that these are her independent/separate properties *de horse* the shadows of her husband's association, the petitioner places on record the registered gift settlement deed dated 03.06.1998.

5. On 15.03.2005, this Court has granted interim suspension of the impugned notice. The same is subsisting as on date. Respondents, in spite of receipt of notice, have not filed their reply.

6. Learned Assistant Government Pleader seeks further time for filing counter affidavit. Having regard to the nature of disposal this Court intends to give; the request for filing counter affidavit is rejected.

7. From the material available in record, it appears the petitioner claims exclusive ownership and possession of subject matter of the impugned notice. Respondents 1 and 2 have to firstly decide the ownership of the property covered by the notice and if the judgment debtor is the owner of the property then only the said property can be brought to sale in execution of orders passed by the competent authority but cannot sell the property of the petitioner straightaway. Therefore, this basic fact requires consideration and adjudication by the first respondent. Therefore, I am satisfied the writ petition can be ordered as follows:

Having regard to the facts and circumstances of this case, the impugned notice is set aside and matter remitted to respondents 1 and 2 subject to the following conditions:

1. The first respondent is directed to, if so advised, call upon the petitioner to show cause why the subject matter of notice cannot and could not be auctioned for realization of the amount due and recoverable from K. Vittal Reddy.
2. Petitioner is given liberty to submit explanation and also documents in support of her case and on receipt of such information, the first respondent shall positively pass orders within a period of four (4) thereafter.
3. The entire exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

The writ petition is ordered. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

June 6, 2016
DSK