

HON'BLE SRI JUSTICE S.V. BHATT
WRIT PETITION No.34841 OF 2012

ORDER :

Heard Sri S.Jagadish, learned counsel for the petitioner and Smt Bobba Vijayalakshmi, learned counsel for the 2nd respondent and learned Government Pleader for Co-operation.

2. The petitioner prays for a Writ of Mandamus declaring the action of the respondents in not rectifying survey numbers in the sale certificate dated 05.03.1992 issued pursuant to the auction held on 17.05.1989 in E.P.No.119 of 1988-89 as illegal, arbitrary, unconstitutional and consequently prays for a direction to the respondents to rectify in sale certificate dated 17.05.1989 Survey No.441/5 as Survey Nos.454/B and 454/C of Bodilaveedu Village, Veldurthy Mandal, Guntur District and issue a sale certificate accordingly.

3. The circumstances relevant for the disposal of the writ petition are as follows:

One Kalluri Chinna Naraiah, son of Chinna Lingaiah of Bodilaveedu Village borrowed money from the predecessor-in-interest of the 2nd respondent bank and executed registered Mortgage Deed dated 19.02.1971. The schedule of properties appended to the mortgage deed according to the 2nd respondent are as follows:

"a. an extent of Ac.0.63 cents pura in S.No.454/B of Bodilaveedu h/o Gundlapadu.

b. an extent of Ac.1.45 cents pura in S.No.454/C of Bodilaveedu h/o Gundlapadu

c. an extent of Ac.0.19 cents pura in S.No.678 of Bodilaveedu h/o Gundlapadu.

d. an extent of Ac.2.00 cents out of Ac.44.14 cents in S.No.441/5 of Bodilaveedu h/o Gundlapadu and bounded on:

East: Forest Konda;

South: Mandalapu Naramma

West: Pokuri Latchamma

North: Chillakura Naramma

e. an extent of 75 sq. yards out of Ac.17.29 cents in S.No.635 of

*Bodilaveedu h/o Gundlapadu and bounded by on:
East: Kalluri Kotaiah
Soputh Bazar
West: Kalluri Kotaiah
North: Galli Bazar."*

4. The borrower committed default in repayment of the loan amount. The 2nd respondent preferred a claim before the 1st respondent was allowed still the borrower did not pay the amount determined by the 1st respondent. The 2nd respondent filed E.P.No.119 of 1988-89 for sale of mortgaged properties. The 2nd respondent brought the property to sale in an extent of Ac.2.00 in Survey No.441/5 of Bodilaveedu Village, Veldurthy Mandal on 17.05.1989. The auction was held on 09.07.1990, and the sale was confirmed in favour of the petitioner. The 1st respondent issued sale certificate in Form No.10, dated 05.03.1992 in favour of the petitioner. The sale certificate categorically refers to the fact that the property has been put to auction, confirmed and sale certificate executed in favour of the petitioner for appreciating the controversy, the schedule of sale certificate is extracted for convenience.:

"Schedule of properties

Registration District :Guntur

Registration Sub-District: Macherla

Mandalam : Veldurthi

Village : Bodila Veedu

Description of properties: (boundaries)

Guntur District, Veldurti Mandal, Bodila Veedu Village and Taluk in Survey No.441/5 admeasuring Ac.2.00 cents or 0.800 hectors land boundaries:

East : Forest and Hill

South: Mandalapu Naramma

West: Pokuri Lachamma

North: Chillakura Naramma.

Survey No. 441/5

Letter 1

Nsame

Estimated extent Ac.2.00 cents or 0.800 hectors

Assessment Rs.

Sale price for each lot Rs.4,400/-“

5. In the above circumstances, the grievance of the petitioner is that the 2nd respondent erroneously or in collusion with the principal borrower has conducted the sale of a property not belonging to the borrower and sold the same to the petitioner. It is further averred that to convey title to the petitioner, the sale certificate should bear Survey Nos.454/B and 454/C of Bodilaveedu Village, Veldurthy Mandal, Guntur District. Hence the prayer.

6. The 2nd respondent filed counter affidavit, setting out the circumstances under which the sale was affected, confirmed and how the sale has attained finality. The 2nd respondent referred to civil litigation between parties. It is further contended that the prayer sought by the petitioner in the writ petition cannot be granted by this Court more particularly in exercise its jurisdiction of this Court under Article 226 of the Constitution of India and prays for dismissal of the writ petition.

7. The 1st respondent filed counter affidavit and has reiterated the stand of the 2nd respondent. The facts and circumstances are not in dispute, therefore, I am avoiding to refer to the averments stated by respondent Nos. 1 and 2.

8. Now the short point for consideration is: Whether the petitioner by way of Writ of Mandamus can seek a declaration that the action of respondents in not rectifying the sale certificate dated 05.03.1992 as illegal, erroneous and arbitrary?

9. The 2nd respondent is the mortgagee. The 2nd respondent by following the procedure stipulated under Rule 52 of A.P. Co-operative Societies Rules initiated the proceedings for recovery of the amount determined by the 1st respondent. According to 2nd respondent, one of the properties in the mortgage deed dated

19.02.1971 was auctioned, confirmed and sale certificate dated 05.03.1992 was issued. The sale was conducted on the very same property which was notified for auction in Form D of Rule 52. The petitioner is an auction purchaser of a property. The auction was held and sale was confirmed in favour of the petitioner. The petitioner cannot and could not ignore the principle buyer beware more particularly in the auctions held by a Court or the 1st respondent. As in the present case, the petitioner can certainly make out grievance, if the notification for sale of property contains Survey Nos.454/B and 454/C and he participated in the auction to purchase the said properties and the 1st respondent erroneously issued a sale certificate for Survey No.441/5.

10. Firstly there is no legal or factual compulsion on the 2nd respondent to correct the sale certificate. What was auctioned was confirmed and sale certificate was issued for the auctioned property. It is matter of record that the petitioner herein and the mortgagor were parties in O.S.No.99 of 1993. The suit filed by the Kalluri Chinna Naraiah and others was decreed on 22.04.1999. The said decree and judgment was confirmed through judgment and decree dated 23.07.2001 in A.S.No.38 of 1999 in the Court of Senior Civil Judge, Gurajal. The writ petition is filed on 06.11.2012 for the prayer already noticed.

11. For all the above reasons, the prayer is misconceived and no ground is made out for entertaining the prayer. Hence, the writ petition fails and accordingly, the same is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions in this Writ Petition, if any, shall stand dismissed in consequence.

S.V. BHATT, J

16.02.2016

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HON'BLE SRI JUSTICE S.V. BHATT

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DATE: 16.02.2016

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