

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.3618 of 2016

ORDER:

The Civil Revision Petition is filed by the petitioner/third party under Section 115 C.P.C, aggrieved by the orders of auctioning the E.P. schedule property on 25.04.2016 by the learned Principal Senior Civil Judge at Kakinada, in E.P.No.12 of 2013 in O.S.No.549 of 2010 without deciding the claim petition filed by the petitioner in E.A. (SR).No.3141 of 2016.

2. Heard and perused the material available on record.

3. This civil revision petition is filed by the petitioner after obtaining permission from this Court to file the present petition.

4. On 25.04.2016, the learned Principal Senior Civil Judge, Kakinada, in E.P.No.12 of 2013 in O.S.No.549 of 2010, passed the following order:

“Bidders present. D.Hr. present. Auction is held and knocked down in favour of K.V.V.S.Naagesh Kumar son of Veeraswamy who is D.Hr. for Rs.29,25,000/- relating to schedule property being highest bidder. The auction purchaser/D.Hr. directed to deposit the 1/4th of the sale amount today and the balance amount within 15 days or as per rule 85 of C.P.C.”

5. The petitioner filed the claim petition E.A.(SR).No.3141 of 2016 before the Principal Senior Civil Judge, Kakinada, under Section 47 read with Order 21 Rule 58 CPC on 20.04.2016, knowing about the auction to be held on 25.04.2016, whereby the learned Judge has returned the petition on 25.04.2016.

6. In E.A.(SR).No.3141 of 2016, the petitioner contended that he is the absolute owner of the schedule property, which was purchased by him on 10.07.2013 from Davarasingu Appa Rao and Davarasingu Ravi Kumar, represented by Possessory Sale Agreement-cum-General Power of Attorney Holder i.e., 2nd respondent, Chilla Srinivasa Reddy, and the same was registered

before the SRO, Kakinada under Document No.6870 of 2013. Originally, the schedule property belongs Davarasingu Nookalamma and she purchased the same on 02.02.1987 from Batchu Suryanarayamma and the same was registered before the SRO, Kakinada, under Document No.914 of 197. Subsequently, she died intestate and her property is devolved to D.Appa Rao and D.Ravi Kumar and D.Polayamma. D.Polayamma executed a gift deed for 1/3rd undivided and unspecified share out of 180 square yards of site to D.Ravi Kumar on 30.07.2005 and the same is registered before the SRO, Kakinada, under Document No.9393 of 2005. As such, D.Ravi Kumar has got 2/3rd share and D.Appa Rao has got 1/3rd share out of 180 square yards of site. So, D.Appa Rao & D.Ravi Kumar jointly alienated the schedule property to the 2nd respondent on 21.02.2007 for a sale consideration of Rs.9,08,500/-. They executed Possessory Sale Agreement-cum-General Power of Attorney authorizing the 2nd respondent, Chilla Srinivas, to execute the sale deeds or enter into sale agreements with third parties as per the power of attorney and they never authorized GPA holder to execute or mortgage the same to the third parties. So, 2nd respondent, Chilla Srinivas, has no right to execute any mortgage deed in favour of the third parties or have no right to borrow any amounts by depositing the Possessory Sale Agreement-cum-General Power of Attorney, dated 21.02.2007, said to have been executed by D.Appa Rao and another in favour of the 2nd respondent. The plaintiff filed O.S.No.549 of 2010 against the 2nd respondent, whereby the O.S.No.549 of 2010 is decreed and the 1st respondent/plaintiff preferred an appeal before this Court and the same is pending. The petitioner further contended that as per the document, dated 21.02.2007, when the executants did not authorize the 1st respondent/plaintiff to borrow amounts by depositing of title deeds and creating the equitable mortgage in favour of the third parties, the

equitable mortgage said to have been executed by the 2nd respondent in favour of the 1st respondent is not valid and that the petitioner has rights over the schedule property and the 1st respondent/plaintiff has no right to bring the schedule property for sale.

7. The 1st respondent/decreed holder/plaintiff has not brought the petitioner on record since he is the subsequent alienee of the E.P. Schedule property and without giving notice to the petitioner, not only the decree but also the auction are invalid. Hence, the present civil revision petition is filed by the petitioner to revise the orders of auction held on 25.04.2016 by the Principal Senior Civil Judge, Kakinada, passed in E.P.No.12 of 2013 in O.S.No.549 of 2010, without deciding the claim petition filed by the petitioner in E.A.(SR).No.3141 of 2016 by setting aside the sale held on 25.04.2016.

8. Even as per the arguments of the learned counsel for the petitioner, the petitioner filed a claim petition in E.A.(SR).No.3141 of 2016 before the Principal Senior Civil Judge, Kakinada, the same is not yet numbered and the same was returned by the Court below with some objections. Now the petitioner prays that he may be directed to be impleaded as a party in E.P.No.12 of 2013 in O.S.No.549 of 2010. If there are any objections to number the E.A.(SR).No.3141 of 2016, it is for the petitioner to comply with the objections and see that the application is numbered before the Court below. Without completing that process, the petitioner directly approached this Court.

9. Having regard to the facts and circumstances of the case, this Court is of the view that the petitioner has no such right to approach this Court without even complying with the objections raised by the Principal Senior Civil Judge, Kakinada, in the E.A. (SR).No.3141 of 2016 in E.P.No.12 of 2013 in O.S.No.549 of 2010 and the civil revision petition is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. There shall be no orders. Miscellaneous Petitions, if any, pending in

this civil revision petition shall stand closed.

RAJA ELANGO, J

Date: 27th July, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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