

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3005 of 2016

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. Petitioner in this Revision Petition is defendant in O.S.No.102 of 1996 filed for partition. Preliminary decree in the partition suit was passed. It was questioned in A.S.No.220 of 2007 before the V Additional District Judge's Court by the petitioner and the same was dismissed on 30-03-2012.

3. In the meantime, I.A.No.633 of 2002 had been filed to pass a final decree. Pending that appeal, application under Order 26 Rule 9 CPC was filed to appoint an Advocate Commissioner for demarcation of the properties.

4. He filed a report on 26-12-2003 stating that it is not possible to divide the properties into two shares.

5. In view of the report of the Advocate Commissioner, the respondent filed I.A.No.2150 of 2012 under Section 4 of the Partition Act praying the Court to put the schedule property for sale between him and the petitioner, and if nobody is willing to purchase, to put the property for public auction.

6. Neither the petitioner nor the respondent offered to purchase properties. Therefore, Court directed properties be sold by public auction. Thereafter paper publication was done advertising the public auction and date was fixed for public auction in the Court as 09-06-2016.

7. On that day, item-1 of the plaint schedule property was sold to one bidder and item-2 was sold to another bidder and both were directed to deposit 1/4th of the sale amount immediately and the matter was adjourned to 30-06-2016.

8. The docket order dt.09-06-2016 on which these facts were noted is assailed by the petitioner in this Revision Petition.

9. Learned counsel for the petitioner contends that no upset price was fixed for the auction by the Court and that suddenly the sale was held and the property was sold for a very meager price. He also contended that the petitioner was willing to purchase the property, if he was allowed to make a bid for the same at this point of time.

10. These contentions have no merit. When the petitioner was made on offer by the Court below to purchase the plaint schedule property, he did not agree for it and only thereafter public auction had to be done. He cannot now turn around and say that he should be

given opportunity to purchase the property at this point of time.

11. Admittedly paper publication for public auction was done and auction was fixed to 09-06-2016 and these facts are stated in the impugned docket order itself. No material is placed by the petitioner before this Court to establish that upset price was not fixed by the Court and that suddenly the open auction was held.

12. Therefore, it is clear that without any basis, the petitioner is making incorrect allegations against the Court below. I do not therefore find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 115 CPC.

13. Therefore, the Civil Revision Petition is dismissed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-07-2016

kvr