

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4157 OF 2016

ORDER:

This civil revision petition is filed by the petitioner questioning the order dated 17.06.2016, passed by the Principal Senior Civil Judge, Nellore in E.A.No.330 of 2012 in E.P.No.37 of 1996 in O.S.No.122 of 1985, wherein and whereby the application filed by the petitioner under Order 26 Rules 9 and 108 read with Section 151 C.P.C seeking to appoint Advocate Commissioner, was allowed.

The facts are not in dispute. Both the petitioner and the first respondent are the auction purchasers and the property of the 4th respondent which was put in auction by the 5th respondent. The respondents 2 and 3 are third party-claimants. The subject matter of the E.P is a property situated in Sy.Nos.285/1, 285/2 and 286/A. It is the claim of the petitioner as well as the first respondent that they came to purchase the land in Sy.Nos.285/1, 285/2 and 286/A through the public auction that was conducted by the 5th respondent-bank. While the total extent of the land which was purchased by both the parties is over an extent of Ac.3.34 cents later, it came to light that as a matter of fact the part of the property which was mortgaged in favour of the 5th respondent-bank, was already alienated in favour of the respondents 2 and 3 and thereby the mortgaged property came to be limited to the extent excluding the property which was alienated in favour of the respondents 2 and 3 and other third parties. It is not necessary for this Court to specify the extents except to state that so far as the petitioner the extent of Ac.1.17 cents in Sy.No.286/A and an extent of Ac.2.16 cents in Sy.No.285 to the first respondent is required to be delivered subject to availability of the land on the ground after excluding the land which was being claimed and determined in favour of the respondents 2

and 3 and other third parties to ascertain the actual extent of land available on an application filed by the first respondent, E.A order has been made appointing the Advocate Commissioner to ascertain the land available after taking the help of the surveyor and measuring the same on the ground. While the petitioner himself does not have any objections for appointment of the Commissioner *per se* his objection is with regard to direction that the survey to be conducted within the boundaries shown in the E.A petition. It is the apprehension of the learned counsel for the petitioner that by limiting the identification of the land with the boundaries as shown in the petition filed by the first respondent, prejudice would be caused to his client as his client has already been delivered the extent of the land in Sy.No.286/A much prior to the land that is being sought to be allocated in favour of the first respondent.

On the other hand, learned counsel for the first respondent submits that what all is directed by the Court below is for assessment of the availability of the land after taking into consideration of the fact that the availability of the land on the ground is less than the land which was originally put to auction came to be purchased both by the petitioner as well as the first respondent.

Having considered the respective submissions, at this point of time, this Court is of the opinion that the apprehension of the petitioner that what is sought to be is directed to be determination of the land in favour of the petitioner to be allocated as per the boundaries mentioned by the petitioner is not well founded as what all has been ordered by the Court below is only with respect to ascertainment of availability of the land on the ground after excluding the land which was admittedly belonging to the respondents 2 and 3 and other third party. Merely because while ordering the petition, it has been observed that “within the

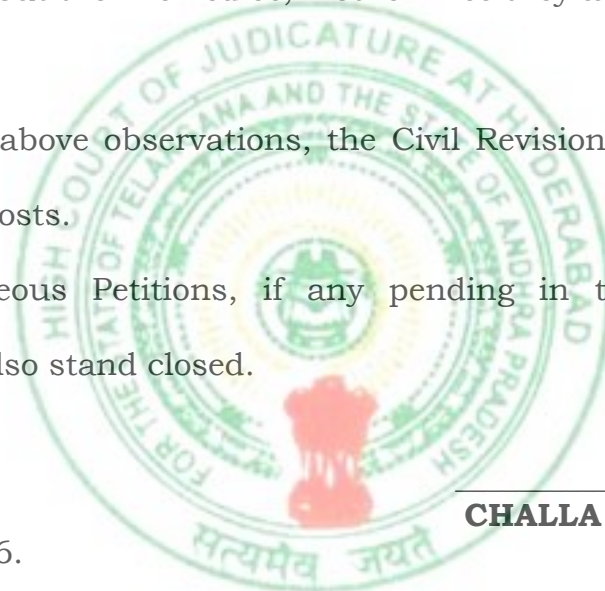
boundaries shown in this petition schedule” cannot be construed as either a direction to demarcate and hand over the land to the first respondent in this revision petition or determination of the rights. As the petition to be construed is only for the purpose of ascertainment and the orders are yet to be passed in main E.P, the said apprehension does not appear to be with any basis. The impugned order itself is clear that the respective parties shall be at liberty to give their work memos. In those circumstances, the order in E.A does not call for any interference. However, it is always open for the parties to agitate after submission of the report by the Advocate Commissioner. Further, it is left open to the parties to work out their remedies, if other wise they are aggrieved at that point of time.

With the above observations, the Civil Revision Petition is closed.
No order as to costs.

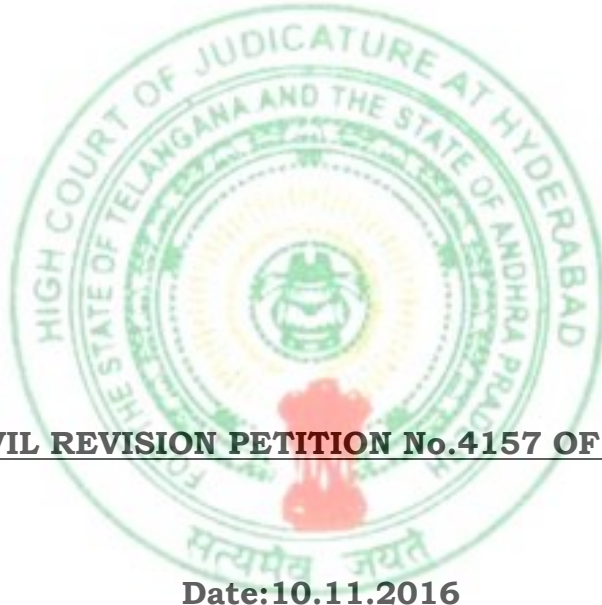
Miscellaneous Petitions, if any pending in this Civil Revision Petition, shall also stand closed.

Date:10.11.2016.
Gk.

CHALLA KODANDA RAM,J



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