

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.517 of 2016

Date:05.02.2016

Between:

Kondeti Pothuraju,
S/o Subbaiah and another.

..... Petitioners

And:

Nagala Lakshmikanthamma,
W/o Late Venkatakrishna Rao

.....Respondents

Counsel for the Petitioners: Mr. C.Narender

Counsel for the Respondent: None appeared

The Court made the following:

ORDER:

This Civil Revision Petition arises out of order, dated 17.12.2015, in E.P.No.132 of 2011 in O.S.No.32 of 2010 on the file of the Additional Senior Civil Judge, Tenali.

I have heard Mr. C.Narender, learned counsel for the petitioners and perused the record.

The petitioners are the judgment-debtors in O.S.No.32 of 2010 filed by the respondent for recovery of money. In E.P.No.132 of 2011 filed by the respondent for

sale of the attached property, the only objection raised by the petitioners was that they have no saleable interest in the said property. The Court below on a careful consideration of the material on record rendered an unequivocal finding that the petitioners failed to establish their plea that encumbrance certificates filed by them showed any encumbrance in favour of third parties and that, therefore, their plea that they have no saleable interest in the schedule property cannot be accepted.

At the hearing, Mr. C.Narender, learned counsel for the petitioners, while not pursuing the said plea, however, submitted that the attached property is capable of fetching much higher amount than what is sought to be recovered by sale of the same. He has placed reliance on the judgment of this Court in ***Malempati Harinarayana Vs. Vankayalapati Subba Rao and others***^[1] for the proposition that sale of properties of the judgment-debtors in excess of the requirement to satisfy the decree cannot be permitted. He has, however, fairly admitted that this issue was not raised before the lower Court.

In my opinion, the issue whether the attached property which is proposed to be sold fetches higher value than the E.P. amount or not is a question of fact which ought to have been raised by the petitioners in the Court below and the same cannot be permitted to be raised for the first time before this Court as it is not possible for this Court exercising revisional jurisdiction to adjudicate such a disputed question.

For the above-mentioned reasons, I do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.641 of 2016 shall stand dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*05th February, 2016
DR*

[\[1\]](#) 2013 (2) ALT 520