

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Petition No.29473 of 2016

Date: 01.09.2016

Between:

K.Vijayasimha Reddy and 2 others

..Petitioners

and

Bank of India
rep. by its Branch Manager
Malakpet Branch, Hyderabad and 2 others

..Respondents

Counsel for the Petitioners: Mr.GL.Narasimha Rao

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The petitioners, who claim to be the third in line purchasers of certain properties, which were allegedly mortgaged by respondent No.3 to respondent No.1, filed this Writ Petition feeling aggrieved by the purported inaction of respondent Nos.1 and 2 in accepting their offer for One Time Settlement (OTS).

From the pleadings of the petitioners, it is evident that respondent No.3 was the original owner of the properties and that she has sold the same to a third party, who in turn sold them to the petitioners' vendor, and that the petitioners have purchased the same under registered sale deeds. They further pleaded that after the properties were purchased by them, they came to know that respondent No.3 has played fraud by not disclosing the fact of mortgaging those properties to respondent No.1, as a result of which, none of the purchasers down the line were aware of the encumbrance she has created over those properties.

The grievance of the petitioners is that respondent Nos.1 and 2 have not been entertaining their request for OTS and are seeking to auction the properties under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act').

In our opinion, this Writ Petition is wholly misconceived for the reason that there is no privity of contract between the petitioners on one side and respondent Nos.1 and 2 on the other side. If respondent No.3 has committed fraud in suppressing the fact of mortgage of the properties sold to her purchasers, the latter are entitled to avail civil and criminal remedies available to them in law. Indeed, the petitioners have pleaded that they have already initiated criminal action against respondent No.3. Respondent Nos.1 and 2 being the mortgagees cannot be prevented from exercising their rights flowing from the deeds of mortgage as well as the statutory provisions under the Act.

As regards the OTS, the petitioners have not placed before us any statutory provisions or the scheme formulated by respondent Nos.1 and 2 under which third parties like them were entitled to insist on settlement of dues under the OTS. In the absence of any privity of contract between the petitioners and respondent Nos.1 and 2, such a request cannot be countenanced in law.

For the afore-mentioned reasons, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.No.36482 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 1st September, 2016
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