

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.R.P No.2054 of 2012

ORDER:

This revision is preferred questioning order dated 15.03.2012 in E.A.No.424 of 2009 in O.E.P. No.3 of 2008 in O.S.No.327 of 2003 on the file of Principal Junior Civil Judge, Puttur, Chittoor District.

2 Revision petitioner herein is decree holder and first respondent, who is second J.Dr filed the above referred E.A. to set aside ex parte order dated 31.03.2008 contending that no notice was served on him for the date of hearing. This petition was resisted by decree holder and the Court below on verification of the record found that no notice was served on first respondent herein and to give an opportunity to him to contest the E.P. by filing counter, ex parte order dated 31.03.2008 was set aside. Questioning the same, present revision is filed.

3. According to revision petitioner, the Court below failed to consider that a sale deed was already executed by the Court in pursuance of the decree dated 20.06.2007 and the same was registered on 17.07.2009 and possession was delivered on 30.09.2009 and E.P. was closed on 09.10.2009, therefore, findings of Court below that notice was not served on first respondent, and opportunity is to be given to file counter has caused serious prejudice to petitioner.

4. As seen from the impugned order, petitioner herein filed counter disputing the claim of J.Dr i.e., first respondent herein and contended that regular sale deed was executed and possession was delivered. But the Court below on verification of the record,

observed that by allowing the petition and setting aside ex parte order the registered sale deed executed in favour of petitioner herein cannot be treated as invalid and that document would be subject to the result of orders in EP and directed both parties to maintain *status quo* till disposal of EP. When the court below on verification of the record found that EP is pending, the contention that EP was closed on 09.10.2009 cannot be accepted without producing necessary proof in that regard. If really Execution Petition is terminated nothing prevents revision petitioner in obtaining certified copy of such EP terminating order to substantiate his contention. Revision petitioner has not produced any material to show that E.P. was closed on 09.10.2009 to contradict the findings of the trial Court with regard to pendency of EP. Trial Court further ordered that first respondent herein shall file counter on or before 02.04.2012, and if he failed to comply with the same, it is ordered that petition shall stand dismissed.

5. Considering these aspects, I do not find any error or illegality in the order of the Court below and it rightly gave opportunity to first respondent herein to contest EP and petitioner can produce the relevant material before the Court below supporting objection taken by it and that the trial Court shall decide the same without being influenced by any of the observations made in this order.

6. For these reasons, this Civil Revision Petition is devoid of merits and dismissed accordingly. No costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

S. RAVI KUMAR, J

Date: 17-03-2016.
gvl

