

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CRP.No.4961 of 2016

ORDER.

The petitioners are the defendants in O.S.No.58 of 2006 on the file of the learned Additional Senior Civil Judge, Ongole, filed by the respondent herein for declaration of title and possession of the plaint schedule property consisting of old tiled house of 492 square feet, Madras tiled house of 195 square feet, ACC shed of 631 square feet and MTC shed of 361 square feet situated in an extent of 227 square yards in Ward No.10, Ammanabrolu Village, Naguluppalapadu Mandal, Prakasam District. The said suit was decreed on 17.8.2009. Seeking execution of the said decree, the respondent filed EP.No.198 of 2013. In the said EP., the petitioners herein filed EA.No.809 of 2014, under Section 47 of the Code of Civil Procedure, seeking to declare the property covered by the sale deed, dated 10.10.1953, as the property of the petitioners and for holding the Settlement deed, dated 24.01.2000, as invalid. In the affidavit, filed in support of the said application, it was stated that they filed AS.No.183 of 2009 before the learned V Additional District Judge, Ongole against the judgment and decree, dated 17.8.2009, in O.S.No.58 of 2006 and it was

dismissed for default. A petition filed for restoration of the said Appeal Suit is pending. It is their case that the property originally belongs to one Pinnaka Veeraiah, who was a Government employee, and he purchased the property in the name of his wife, Venkata Seshamma, as a *benami*. Thus, the said Seshamma has no right over the property. They came to know that the said Seshamma executed a registered settlement deed in favour of the respondent on 24.01.2000 and since she has no right or title over the property, she cannot execute the said settlement deed.

A counter-affidavit was filed by the respondent stating that the suit was decreed on contest. It was further stated that the EP was filed in the year 2013 and an Amin went to the suit locality for delivery of the E.P. schedule property. When the Amin noticed that the suit schedule property was locked, the respondent filed an application to break open the lock of the said property and that EA.No.809 of 2014 was filed by the petitioners in order to create a fresh cause of action.

The learned Principal Senior Civil Judge, Ongole before whom the application, viz., EA.No.809 of 2014 was filed considered the rival contentions and held that the petitioners did not take the plea of *benami* throughout the suit proceedings though the same was available to them and they came out with

the said plea for the first time. The lower Court, accordingly, held that it is hit by constructive *res judicata* and by its order, dated 17.8.2016, gave a finding that the said Seshamma is having sufficient source of income to purchase the property. Hence, the transaction covered under Ex.P-1, dated 10.10.1953, cannot be termed as a *benami* transaction. Though the present Civil Revision Petition is filed challenging the said order, Mr. Gade Venkateswara Rao, the learned counsel for the petitioners, could not point out the illegality in the said order. In the circumstances, this Court sees no reason to admit the Civil Revision Petition and the same is, accordingly, dismissed. No costs.

As a sequel to dismissal of the Civil Revision Petition, the Miscellaneous Petitions, if any pending, are dismissed as infructuous.

JUSTICE A.RAMALINGESWARA RAO

09th December 2016

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