

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5500 of 2015

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure by the third party claim petitioner is filed being aggrieved of the fact that the court of execution is not adjudicating, in accordance with the procedure established by law, the claim petition (EA.No.355 of 2015) filed by him and is proceeding with further steps in the execution for conduct of sale and sale confirmation.

2. I have heard the submissions of the learned counsel for the petitioner. Though the respondents are served with notices, none appeared. I have perused the material record.

3. The 1st respondent/DHr having obtained a decree is bringing the EP schedule properties for sale. The present petitioner, who is a third party, had filed an application- EA.No.355 of 2015 under Order XXI Rule 58 of the Code to declare that the DHr has no right to bring the claim petition schedule property to sale and to determine the right, title and interest of the claim petitioner over the claim petition schedule properties. The said application was filed on 31.08.2015 as per the submissions made before this Court. Despite pendency of the said application, in November 2015, the Court of execution had directed to proclaim and sell the EP schedule properties and further directed publication of the notice in Prajasakthi daily

newspaper and also directed for listing the matter on the next date of adjournment i.e., 19.11.2015. Therefore, the revision petitioner is aggrieved.

4. At the hearing, a request is made to direct the Court below to dispose of the claim petition in accordance with the procedure established by law and also the application filed along with it for granting of stay of all further proceedings in the execution petition to meet the ends of justice.

5. Order XXI Rule 59 of the Code reads as follows:

59. Stay of sale.- Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the court may,—

(a) if the property is movable, make an Order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an Order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such Order may be made subject to such terms and conditions as to security or otherwise as the court thinks fit.

6. When once the property attached has already been advertised for sale, the court of execution may make an order that pending the adjudication of the claim or objection, the property shall not be sold or in the alternative the court of execution may make an order that pending such adjudication the property may be sold but the sale shall not be confirmed. However, in the instant case, before passing the orders for proclamation and sale, the court below did not pass an order as required under Order XXI Rule 59 of the Code. Further, from the submissions now made before this Court, it appears that the claim petition is filed even before the property attached has been advertised for sale.

7. Viewed thus, this court finds that the revision petition can be disposed of with certain directions as now sought for.

8. In the result, the Civil Revision Petition is disposed of directing the Court of execution to dispose of EA.no.355 of 2015 and EAno.356 of 2015 filed for grant of stay of execution in EP.no.49 of 2014 before proceeding further with the execution proceedings in the EP in accordance with the procedure established by law, however, after giving an opportunity to the DHr to file counters. No costs.

Miscellaneous petitions, if any, pending in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

26.02.2016

Vjl