THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4984 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner is directed against the orders dated 02.11.2015 of the learned VII Additional District Judge, Gudur of S.P.S.R. Nellore District passed in OP.no.72 of 2015 filed by the petitioner under Section 151 of the Code of Civil Procedure, 1908 and Section 10 of the Transfer of Property Act for permission to sell to the third parties the property mentioned in 'B' schedule in order to raise funds for the purpose of construction of a compound wall around the remaining extent of the property mentioned in the 'A' schedule annexed to the petition.

2. I have heard the submissions of the learned counsel for the revision petitioner. Be it noted that in the original petition no party is arraigned as a respondent and it is stated that the respondents are 'nil'. However, in this revision petition one Challa Kannaiah was added as a respondent as per orders dated 01.03.2016 in CRP.MP.no.6655 of 2015. Despite service of notice, he had not appeared before this Court; and, none appeared on his behalf. I have perused the material record.

3. The case of the petitioner, in brief, is this:

The petitioner is a Yogi (Saint) known as Yogeeshwara Sri Lakshmana @ Sri Lakshmana Yogi. The petitioner is a resident of Arunachala Hrudayam, Ramanashram Post, Tiruvannamalai. In the Original Petition (OP) he is being represented by his registered General Power of Attorney holder, C. Dhananjay Trivedi ('the GPA', for brevity). The petitioner is the absolute owner of 'A' and 'B' schedule properties at Chillakur of SPSR Nellore District. The land is of a total extent of Ac.9.20 cents. However, as on the date of the institution of the OP the petitioner has been in possession and enjoyment of Ac.7.41 cents. The petitioner has got the same from T.

Dayakar Reddy by virtue of a deed of Gift bearing document no.2009/1958 registered in the Office of Sub-Registrar, Nellore. Ever since the said deed of gift, the petitioner is in absolute possession and enjoyment of the property. He is carrying on spiritual tradition and other spiritual and allied activities. As per the wishes of the donor, he has been maintaining the schedule property to the best of his capacity over the past more than 50 years. The petitioner is presently aged 89 years. Therefore, he thought it fit to appoint one of his students as his GPA. Over a period of time, the vacant land of the petitioner, that is, approximately Ac.1.23 cents was encroached by poor people. They had raised temporary huts in the said land in Sy.no.150 and also in an extent of Ac.0.29 cents out of the property. They are misusing the same by throwing disposable waste material and committing acts of nuisance over the property. However, the petitioner out of kindness towards those homeless people had allowed them to stay in Ac.1.23 cents and Ac.0.29 cents instead of evicting them immediately. Instead of gratefully appreciating the kindness of the petitioner, during the last few years, some unscrupulous elements have become greedy and are attempting to grab some more of the petitioner's land. The acts of those ungrateful people are treacherous. Instead of being loyal and helpful to the petitioner for the un-beseeched favour, they now desire to grab more of the petitioner's land. Therefore, the petitioner thought it fit to construct a compound wall/boundary wall all along the boundaries of the property, i.e., the "A" schedule property, in order to safeguard the property from being further encroached. When an estimation was got made, the total cost of construction of the compound wall was estimated @ Rs.40,40,000/-. The petitioner is not having that much of money to spend on the construction of the compound wall/boundary wall all along the boundary of the property to safeguard the property from being further encroached upon. Therefore, it has become necessary to sell a portion of the property. Therefore, the petitioner intends to sell a portion of the entire property, i.e., 'B' schedule property i.e., Ac.1.00 cent each in S.Nos.150 and 154-A more fully described in the 'B' schedule annexed to the petition so as to raise money for construction of a compound wall around the remaining property, which is more fully described in the petition 'A' schedule. As the petitioner now intends to sell a portion of the property out of the property, which is gifted to him, that is, the ‘B’ schedule property, the present petition is filed for permission to sell the same. The permission for sale of a portion of the property is being sought to meet a just cause viz., construction of compound wall all along the boundaries of the remaining ‘A’ schedule property to prevent it from being encroached. If the ‘B’ schedule mentioned property is not permitted to be sold for the purpose desired, the very existence and safety of the ‘A’ schedule property will be in jeopardy. The sale of ‘B’ schedule property is mainly intended for preservation of the ‘A’ schedule mentioned property and to maintain spiritual tradition and atmosphere. Thus, the sale of ‘B’ schedule property is for a recognized legal necessity. If the petitioner is not given the necessary permission to make any alienation even in the case of existing necessity, the very object of donation of the property for the purpose of carrying out spiritual activities may suffer. There is a pressing necessity for sale of ‘B’ schedule property and the sale is intended for the benefit of the estate and if such sale is not permitted, it would render ineffectual the entire dedication. If a compound wall is not constructed around ‘A’ schedule property it would be difficult to preserve the said property. The cost of construction of a compound wall was estimated by a licensed surveyor and a survey map was given by the MRO office of Gudur. The said map indicates that the extent of land in the enjoyment of the petitioner is Ac.7.41 cents; and that from out of the total extent of land, Ac.1.23 cents and A.0.29 cents were already encroached; and that an extent of Ac.0.27 cents was acquired by the Government for Telugu Ganga Project. There are no impediments under law for according permission for sale of ‘B’ schedule property in order to safeguard the ‘A’ schedule property from being further encroached upon. The intendment and the request for permission for sale of ‘B’ schedule property are *bona fide.* Hence an order may be passed permitting the petitioner to sell the ‘B’ schedule mentioned property to third parties/intending purchasers in order to raise funds for the purpose of construction of a compound wall around the remaining portion of the land i.e., ‘A’ schedule mentioned property and preserve the ‘A’ schedule property for the maintenance of spiritual tradition and atmosphere and continue to fulfill the very object of dedication.

4. One Challa Kannaiah, the respondent herein filed objections/counter before the trial Court *inter alia* contending as follows:

He is permanent resident of Chillakur village where Shree Lakshman Aashramam is situated. He is also one of the devotees and used to attend the said Ashramam whenever Poojas were performed. He does not know about the issuance of GPA by the petitioner to C. Dhananjay Trivedi. It is true that T. Dayakar Reddy executed a gift deed on 30.06.1958 in favour of the petitioner in respect of Ac.9.20 cents. The wording in the gift deed is as follows – 'the schedule mentioned property hereunder is being gifted to you today through this deed without any power to you to subject it to any encumbrance such as sale, gift or transfer etc.,'. Therefore, as per the conditions of the gift deed, the beneficiary i.e., the petitioner herein has no right to sell or transfer or gift etcetera the schedule mentioned property. He has got only right to possess the schedule mentioned land throughout his life time; and, after his lifetime, the group of his students who shall be elected by him, shall have possession with a right to use the schedule mentioned property as an Ashramam as being done now and the property gifted shall be put to use by the successors of the petitioner as an Ashramam forever to serve the object of dedication. The petitioner has no right to file this petition for permitting him to sell the 'B' schedule property to third parties. The entire Ashramam property i.e., the land which is in possession of the petitioner is covered with barbed wire fencing on all sides. The said Ashramam got two iron gates i.e., one on Eastern side of about 20 feet and the other is on Northern side of about 15 feet. The present market value of the land per cent is more than one Crore of rupees. The petitioner had filed this petition seeking permission to sell Ac.2.00 cents of land alleging that he has to construct compound wall around 'A' schedule property and that the cost of construction is allegedly estimated @ Rs.40,40,000/-. Therefore, the *bona fides* of the intention of the petitioner have to be suspected. This objector as a devotee of the Ashramam is objecting to sell the petition 'B' schedule property in view of the condition mentioned in the gift deed. The petition may be dismissed with costs.

5. At trial, the GPA of the petitioner and a supporting witness by name S. Krishna Rao were examined as PWs1 and 2. Exhibits A1 to A15 were marked. The sole respondent herein, who was stated to be an objector, was examined as RW1. His Aadhar card was marked as exhibit B1.

6. On merits, the Court below had dismissed the petition *inter alia* holding that there is an express bar for alienating the property in exhibit A2, the certified copy of the gift deed executed by T. Dayakar Reddy in favour of the petitioner in respect of the entire petition schedule property. Therefore, the aggrieved petitioner is before this Court.

7. The learned counsel for the petitioner while reiterating the case pleaded by the petitioner would contend as follows:

The restraint of alienation mentioned in the gift deed dated 30.06.1958, the copy of which is marked as exhibit A2, is not an absolute restraint. It is not in accordance with the statutory provisions. The restraint against alienation in respect of the gifted property is contrary to the provision and purport of Section 10 of the Transfer of Property Act. Earlier, some part of the land was acquired by the Land Acquisition Officer of the erstwhile Government of Andhra Pradesh. That land was acquired for the Telugu Ganga Project. The court below had failed to consider properly the true purport of Section 10 of the Transfer of Property Act. The court below had erred in dismissing the OP solely on the ground that there is an express bar against alienation of the property in the gift deed. The court below did not appreciate the valid reasons that are assigned in the petition in support of the request to sell the 'B' schedule property. The court below did not look into the aspect that the alienation of 'B' schedule property is essential for protection of the remaining 'A' schedule property and that unless 'B' schedule property is alienated for raising money for construction of compound wall around 'A' schedule property and that unless a compound wall is constructed around 'A' schedule property, it is difficult to safeguard that property. The court below ought to have seen that if a compound wall is not immediately constructed all along the boundaries of 'A' schedule property, the object for which the property was dedicated would be defeated. The petitioner is not disputing the fact that some encroachments are already made by some encroachers. The court below ought to have seen that there are also attempts of grabbing the remaining property of the petitioner, who is an aged person and a Yogi. In view of the apprehensions of the petitioner that the remaining property would also be encroached if not protected by constructing a compound wall, the court below ought to have allowed the OP and ought to have granted permission to the petitioner to sell the 'B' schedule property to third parties/intending purchasers. The court below ought to have seen the *bona fides* in the request made by the petitioner. The court below ought to have seen that the endeavor of the petitioner is to see that the activities as desired by the executant of the gift deed are continued for ever by protecting at least 'A' schedule property. The Court below ought to have allowed the OP with such restrictions and conditions, which are deemed fit and proper and ought to have accorded permission for alienating the 'B' schedule property to safeguard the remaining 'A' schedule property in the interests of justice instead of dismissing the OP. This Court may, while allowing the revision and setting aside the orders of the Court below and while permitting the petitioner to alienate the 'B' schedule property, impose any conditions, which this Court may deem fit and proper in the facts and circumstances of the case. The petitioner is prepared to abide by any reasonable conditions, which this Court may impose while according permission for sale of 'B' schedule property. This Court, if considers appropriate, may direct the 'B' schedule property to be sold in a public auction and the authority to conduct public auction may be given to the District Collector of SPSR Nellore District with power of delegation to delegate that power to a subordinate like a Revenue Divisional Officer of the concerned division or any other competent officer for realization of the best price for 'B' schedule property. The court below was in error in holding that there is a restraint on alienation and that, therefore, the alienation of 'B' schedule property cannot be permitted.

7.1 In support of his contentions, he placed reliance on the following decisions: (1) **A.B.C India Limited v. A.P. Industrial Infrastructure**

Corporation Limited[1]; (2) **Jagdeo Sharma v. Nandan Mahto**[2]**; and (3) R. Raghupathy v. Unknown**[3]**.**

8. There is no dispute that the petitioner is the owner of 'A' and 'B' schedule properties having got right, title and interest and possession in respect of the said properties by virtue of a registered gift deed dated 30.06.1958 executed in his favour by T. Dayakar Reddy, S/o.Thikkavarapu Venkatarama Reddy. The copy of the said deed is marked as exhibit A2. Apart from examining PWs1 and 2 to substantiate the pleaded case, the petitioner had further exhibited the following exhibits: 'Exhibit A1, the copy of the GPA executed by the petitioner in favour of PW1; exhibit A3, the original of 1-B Namoona; exhibit A4, the adangal pahani; exhibit A5, the rough sketch issued by the Mandal Surveyor, Chillakur; exhibit A6, the encumbrance certificate; exhibit A7, the certified copy of the sale deed executed by Subbamma in favour of Challa Gangadhar; exhibit A8, the certified copy of the sale deed exuected by Konduru Subrahmanyam and Subbamma in favour of Gunji Santhamma; exhibit A9, the proceedings issued by the Special Deputy Collector, Telugu Ganga Project; exhibit A10, the Photos along with CD; exhibit A11, the estimation for the proposed construction of compound wall given by the licensed building surveyor, Gudur Municipality; exhibit A12, the market value certificate issued by the Sub-Registrar, Gudur; exhibit A13, the certificate issued by the Joint Sub-Registrar, Gudur regarding the particulars of prohibited property or registration; exhibit A14, the injunction order given by the learned Principal Junior Civil Judge, Gudur in IA.no.619/2014 in OS.no.218/2014; exhibit A15, the certified copy of the Advocate Commissioner's report in IA.no.620/2014 in OS.no.218/2014 on the file of Prl. Junior Civil Judge, Gudur.'

9. I have carefully gone through the copy of the deed of Gift. Since the petitioner is a Yogi and is a resident of Ramanashramam, Tiruvannamalai and as the executant of the gift deed is a disciple of the petitioner and as he had intended to provide land for ashramam of the petitioner, he had gifted his property mentioned in the schedule of the document to the petitioner. A perusal of the recitals in the gift deed would disclose that the possession of the property was already delivered and that with the consent of the donor a residential house was constructed in a part of the property and that the property was gifted with the avowed objective that the dedication shall continue perpetually for the purpose intended therein. However, under the document, permanent absolute rights are conferred on the donee, that is, the petitioner and it is stated that the schedule property shall be utilized for the purpose of running the ashramam perpetually by the petitioner and his disciples. Nonetheless, there is a specific clause in the gift deed that the property shall be enjoyed with absolute right without rights of alienation and right to transfer the property by way of gift or sale etcetera. Thus, under the gift deed there was a prohibition against alienation/transfer of the property either by gift or sale. In view of the said bar in the gift deed, the first question that falls for consideration is as to whether the petitioner is entitled to make a request to permit him to alienate the 'B' schedule property which is a part of the schedule of property under the gift deed dated 30.06.1958.

10. In view of the fact that reliance was placed upon Section 10 of the Transfer of Property Act, it is necessary to first refer to the provisions of Sections 8, 10 and 11 of the Act, which read as under:

> **8. Operation of transfer.--Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.**
>
> **Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;**
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> **and, where the property is machinery attached to the earth the movable parts thereof;**
>
> **and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;**
>
> **and, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;**
>
> **and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.**
>
> **10. Condition restraining alienation.--Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is**

void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same for her beneficial interest therein.

11. Restriction repugnant to interest created.--Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

It is also necessary to refer to infra, to Section (34) of the Trust Act, to which also a reference was made at the time of hearing.

Right to apply to Court for opinion in management of trust property.— Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit. The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application. The costs of every application under this section shall be in the discretion of the Court to which it is made.

In the decision in **ABC India Limited** (1 supra), this Court while considering the validity of restraint clause in a sale deed, having referred to Sections 8, 10 and 11 of the T.P Act had held as follows:

18. Chapter II of TP Act contains two parts. Part A deals with transfer of property whether "movable" or "immovable" and part B deals with transfer of "movable" property. As per Section 5 thereof transfer is defined as conveyance of property from one living person to one or more living persons. Section 6 of TP Act declares that property of any kind may be transferred except the one, which is prohibited. Section 6(h) of TP Act inter alia prohibits transfer, which is opposed to the nature interest effected thereby or for an unlawful object or consideration within the meaning of Section 23 of Contract Act. Sections 8, 10 and 11 of TP Act attach sanctity and solemnity to a transfer of immovable property and read as under:

8 ……….

10 ...…….

11. …………

19. Thus when transfer is completed (on execution of sale deed in case of immovable property) any restriction contained in the transfer deed disentitling the transferee from operating or disposing of his interest would be void and even when such a restriction is created, transferee can enjoy the property ignoring the same. In view of Section 4 of TP Act, all the provisions relating to contracts shall apply to TP Act and, therefore, any transfer or conveyance incorporating restraint clauses would be void and the purchaser can ignore such clauses.

Though in this decision a further question as to whether the seller of the immovable property can cancel the transfer of the property on an allegation that the conditions, if any, in the sale deed are not complied with by the buyer was also raised for consideration, we are not concerned in the instant case with the said aspect of the matter decided in that cited case.

In the decision of the Patna High Court (2nd supra) the facts are as follows: - 'Admittedly, the land in question was given to 2nd defendant by way of gift by the then Raja of Amawan under a registered deed of gift dated 16.04.1944/ext.A.1. That deed contained a stipulation that the gifted land will be held by the donee and that after her death it will be held by her heirs generation after generation but neither the donee nor her heirs will ever have the right of alienating the same either by way of sale, exchange or mortgage etcetera. It was further recited that in case of any alienations in any manner by the donee or her heirs, the effect of such alienation will be that the deed of gift will stand automatically cancelled and the donor will get the right to come into possession of the gifted property. Therefore, it was contended that the 2nd defendant or the 3rd defendant had no right to transfer the suit land in favour of the 1st defendant. The case of the plaintiff was that the restriction imposed under the gift deed in restraint of alienation was void and illegal by virtue of Section of the T.P. Act. The lower appellate Court held that the stipulation restricting the donee or her heirs was not bad and that such a restriction was permissible. In the second appeal it was contended that the view taken by the Court below that a donee or her heirs can be completely restrained from alienating the property is bad.' In this background of facts and contentions, it was held as follows: - 'Mr.Singh is correct, but in my view Section 126 cannot read in isolation and has to be read along with Section 1of the T.P. Act which says that any stipulation completely restraining the donee from transferring the gifted property is void. If read together, which must be so read, the only reasonable conclusion that one can arrive at is that Section 126 is the general section which is controlled by Section 10 and if that is done, then it is obvious that the stipulation in Ext.1 completely restricting the donee from alienating the gifted property is void. I am supported in the view that I have taken by the decision in the case of Mt.Brij Devi v. Shiva Nandan Prasad [AIR 1939 All 221].'

In the decision in **R. Raghupathy v. Unknown** (3 supra) the facts and ratio are as follows: - 'The petition was filed by a Trust represented by its hereditary trustees. The ancestors of the trustees had constructed a banglow-A schedule property. The Idol of Sri Rajagopalaswamy is brought and a Mandagapadi is conducted by their family. The festival involved considerable expenses. Two brothers, who are the predecessors of the present trustees, who are interested in providing for the above Mandagapadi had intended to provide funds and income and had, therefore, set apart some properties for the Trust. Therefore, they had earmarked 'A' schedule property for Mandagapadi expenses by way of registered settlement deed named as "Kaingarya" trust deed dated 16.09.1954. They had provided under that deed that Mandagapadi must be performed in the A schedule building every year and that the income from the B schedule properties must be utilized for that purpose. One of the brothers died. He had executed a Will nominating the other brother, who is the father of the present trustees, to succeed him. The other brother took over and managed the properties in terms of the Will. In his Will, he had nominated his sons to be the trustees, after his life time. On his death, his surviving sons became the present trustees. A portion of the land was acquired by the Government. It is their case that to secure permanent source of income for maintenance of the property and for performance of Mandagapadi every year, it has become imperative for the trustees to sell the unremunerative 'B' schedule lands and also some portions of 'A' schedule property which are lying waste and to invest the proceeds, which will provide constant and good income by way of interest for the Trust to meet the Mandagapadi expenses. Therefore, they requested that they may be permitted to sell certain areas and to invest the sale proceeds in securities as provided under Section 20 of the Trust Act by stating that the income will be sufficient to meet the yearly expenses and that they have no other motive except to perform the obligations of the Trust as being done every year. The trustees also agreed to abide by the directions of the Court. They eventually prayed the Court to permit them to sell the schedule mentioned properties at the market value and permit them to invest the sale proceeds. The learned District Judge rejected their request.' IN this factual background, the High Court of Madras having considered various precedents cited before it and having discussed the issue in terms of the rulings cited before it, had held that under Section 34 of the Trust Act, the Court can order sale of the property even though there is a bar on alienation in terms of the Trust deed, under very exceptional circumstances and rare cases, where the Court is satisfied that it was absolutely necessary for the very implementation and continuation of the objects of the Trust and that the conditions of the property were so bad and that the continued preservation of the property/trust could be only by way of sale of the property.

11. Having regard to the legal position obtaining, this Court is satisfied that permission for sale of a part of the property covered by the instant gift deed under the original of exhibit A2 can be accorded despite a specific clause in the gift deed that the property shall be enjoyed with absolute right without rights of alienation and right to transfer the property by way of gift or sale etcetera, provided this Court is further satisfied that according permission for such alienation as sought for is absolutely necessary for the continued preservation of 'A' schedule property and for the perpetual fulfillment of the object of dedication.

12. Coming to the next aspect as to whether sufficient case is made out for according permission for sale of 'B' schedule property, it is to be noted that the total extent of property gifted is Ac.09.20 cents. According to the petitioner, the property in extents of Ac.1.23 cents and Ac.0.29 cents in 'A' schedule property, was stated to have been encroached, and the property of an extent of Ac.0.27 cents, was stated to have been acquired by the

Government for Telugu Ganga Project and that the remaining extent in the possession and enjoyment of the petitioner is Ac.7.41 cents. The established case of the petitioner is that in view of the further imminent threats of encroachment of the remaining property, it has become imperative to seek permission to sell the 'B' schedule property of a total extent of Ac.2.00 cents in two distinct survey numbers in order to raise money for construction of a compound wall around 'A' schedule property of an extent of Ac.5.41 cents by investing Rs.40,40,000/- as estimated by a responsible licenced surveyor. It is also established that the petitioner being a Yogi has no money and that he is not in a position to invest that much of amount for construction of a compound wall. As rightly contended, for a Yogi of the age of more than 89 years as on today, who leads a saintly life, it is difficult to constantly keep a watch over the property and protect it from being encroached by unscrupulous elements of the society. In that view of the matter, having regard to the facts and evidence brought on record, this Court is satisfied that this is a rare and exceptional case and that sufficient case is made out for according permission for sale of 'B' schedule property for the desired purpose and that if permission as sought for is not accorded there is every likelihood of unsocial and unscrupulous elements of the society encroaching the remaining 'A' schedule property resulting in defeating the object of dedication.

13. Now that this Court has held that a case is made out for according permission for sale of 'B' schedule property for the desired purpose, the next important aspect to be considered is as to what are the terms and conditions that can be imposed while according permission as sought for and what are the safeguards that my be directed to be followed while alienating the property. The petitioner states that the petitioner is prepared to abide by any reasonable conditions that may be imposed by this Court. There is no material before this Court as to what is the present market value of the property. Having given detailed and thoughtful consideration to the said aspect, this Court is of the considered view that the order impugned can be set aside and that the revision petition can be allowed and the Original

Petition can be partly allowed according permission to the petitioner to alienate 'B' schedule property subject to the terms and conditions infra to be implemented by the Court below.

14. In the result, the civil revision petition is allowed and the order impugned is set aside. As a sequel, OP.no.72 of 2015 is allowed in part and permission is accorded for alienation of the 'B' schedule property subject to the following safeguards, terms and conditions:

a) The learned VII Additional District Judge, Gudur, on receipt of a copy of this order shall issue notices to the petitioner and the respondent herein to place before the Court the complete details of the donor under exhibit A2, in case he is available or that of his successors or legal heirs and give him/them an offer to purchase the 'B' schedule property for a market price that may be determined by the learned District Judge by following the necessary procedure and by taking necessary evidence in that regard. If the donor or his successors/ legal heirs express unwillingness to purchase as the case may be and alternatively if the successors/legal heirs of the donor are unwilling to make a collective purchase and there are more than one individual claims to purchase the property from them, the learned Additional District Judge shall conduct a public auction of the 'B' schedule property in open Court amongst the said successors/legal heirs of the donor and confirm the sale in favour of the highest and successful bidder as per the procedure that the Courts generally follow in case of sale of immovable property in execution proceedings.

b) In case the efforts to secure the particulars of either the donor or his successors/legal heirs prove in vain or on his/their unwillingness to purchase the 'B' schedule Property, which is part of the property donated by the donor, or in case the donor or his successors/legal heirs do not offer a reasonable market price acceptable to the Court below for purchase of the property, the learned VII Additional District Judge, Gudur, shall communicate a copy of this order to the District Collector, Nellore to take appropriate and necessary steps for sale of 'B' schedule property by way of public auction after giving wide publicity including publicity by way of publication in two or more vernacular Telugu newspapers and two or more local newspapers and have the ‘B’ schedule property auctioned under the supervision of the Revenue Divisional Officer of the concerned division. On such sale, the District Collector shall take steps to deposit the sale proceeds to the credit of the OP before the trial Court on immediate finalization of the auction sale.

c) The sale proceeds realized in either case shall be invested by the court below in a fixed deposit until its further orders. The trial Court shall further direct the Executive Engineer, R & B of the District to get prepared a sketch plan of the proposed compound wall and estimate for construction of the same through his subordinate and also to call for tenders for construction of a pucca compound wall around ‘A’ schedule property by taking care to see that the work of construction of compound wall is entrusted to a successful tenderer/contractor and that the construction work is done under the supervision of a responsible subordinate of the said executive engineer. Further, on certification by the said executive engineer that the construction was done to his satisfaction and that the amount can be released in favour of the contractor, the trial Court shall encash the fixed deposit and pay the amount due and payable to the contractor. The balance amount, if any, shall be paid to the petitioner on an application for grant of cheque in that regard filed by the petitioner.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

1st June, 2016
Vjl

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[1] 2010 (6) ALT 142

[2] AIR 1982 Pat 32

[3] 2003(2) CTC 38