

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.280 of 2016

Dated 5-8-2016

Between:

Rachakonda Vijaya Sri and another.

..Appellants.

And:

Gonuguntla Venkateswarlu (died) and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.280 of 2016

JUDGMENT:

This appeal is filed questioning order dated 19-2-2016 in E.A.No.42 of 2015 in E.P.No.17 of 2010 in O.S.No.269 of 2005 on the file of XIII Additional District Judge, Narasaraopet.

Appellants herein are Judgment Debtors 4 and 5 in the above referred E.P. They filed E.A.No.42 of 2015 to set aside auction dated 22-12-2014 on the ground of irregularity. According to appellants, their late father Subrahmanyam and second J.Dr. were looking after proceedings and they being legal heirs came to know about proceedings while they were in progress. They contended that the decree in O.S.No.269 of 2005 is an exparte decree and that they have no knowledge about the attachment of property. They also contended that judgment and decree are not at all in consonance with each other and that there is a variation between these two. They contended that decree obtained by D.Hr. is not sustainable and basing on such decree, E.P. is not maintainable. They contended that property attached belongs to joint family and there are other co-sharers having vested right in the property, therefore,

auction is not valid. It is contended that there is an error apparent on the face of execution proceedings and therefore, the sale held by court below has no legal validity. They also contended that there is irregularity in respect of amount mentioned in the execution proceedings with that of the sale conducted by court, therefore, the same has to be set aside.

For this, D.Hr. opposed application and contended that both petitioners are wife and son of the second J.Dr. and they are added as parties being legal representatives of the deceased second J.Dr. on 12-6-2014 and first J.Dr. is a firm which is represented by J.Drs.2 and 3. It is also contended that 3rd J.Dr. is none other than brother-in-law of J.Dr.4 and paternal uncle of J.Dr.5 and all of them have knowledge of E.P. proceedings since more than six months. It is further contended that J.Drs.1 to 3 filed application to set aside exparte decree in the suit and that was dismissed on merits against which they preferred appeal to the High Court with delay of 1258 days and the same was dismissed on merits, consequently, appeal was rejected and decree has become final. It is further contended that there is no error or mistake in the execution proceedings and the sale conducted by court is absolutely legal and valid.

Auction purchaser also filed counter and contended that property was attached in the year 2008 by way of tom tom and on the basis of publication more than 50 persons from Vinukonda and Narasaraopet and surrounding villages participated in the auction and property was sold at Rs.1.68 crores. It is also contended that he has paid the entire bid amount and if the sale is set aside, it will cause irreparable loss as he has parted with huge amount of Rs.1.68 crores.

On these contentions, court below conducted enquiry and on a consideration of contentions and rival contentions of both parties, trial court dismissed the

application. Aggrieved by the same, present appeal is preferred.

Heard both sides.

Advocate for appellants mainly contended that there is inconsistency between judgment and decree in O.S.No.269 of 2005 and there is no mention about anything in the judgment regarding damages to the Decree Holders but in the decree, there was clause for payment of damages, therefore, court below ought to have held that Decree Holders are not entitled for recovery of damages from the appellants by sale of property.

He further submitted that sufficient material was placed before the trial court to show that there is material irregularity in conducting sale and the same was not properly appreciated and therefore, the order of the lower court is liable to be set aside.

On the other hand, advocate for auction purchaser submitted that sale was conducted properly in accordance with law and as many as 50 bidders participated in the auction and finally, auction purchaser bid the auction for Rs.1.68 crores and he parted with huge money and the present application to set aside the sale is filed without any material and the trial court rightly dismissed the application.

Now the point that would arise for my consideration in this appeal is whether the order of the court below is proper, legal and correct?

POINT:

There is no dispute that decree in O.S.No.269 of 2005 is an exparte decree which has become final on dismissal of A.S.M.P.No.694 of 2011 by this Court. It is also not in dispute that E.A.No.42 of 2015 is filed under Order 21 Rule 90 C.P.C. For invoking this provision, the petitioner must place material showing material irregularity

in conduct of sale. To invoke this provision, there must be material to the satisfaction of the court that there is material irregularity or fraud in publishing or conducting sale which resulted substantial injury to the party on account of such irregularity or fraud. In the entire affidavit, filed in support of E.A.No.42 of 2015, nowhere it is whispered as to the nature of material irregularity and fraud so also the substantial injury sustained by reason of such irregularity or fraud. Entire affidavit is in respect of merits and demerits of the decree which cannot be permitted in a petition under Order 21 Rule 90 C.P.C. One of the contentions of the appellants is that there is a wrong mention of the amount in the sale Istiyar. As seen from the record, though E.P. amount was around 40 lakhs, property sold in the auction which fetched Rs.1 crore 68 lakhs. It is also clear from the record that more than 50 persons participated in the auction and seriously participated in the bid. When the appellants have not pleaded as to what is the material irregularity in conduct of the sale, and the details of fraud which are the main ingredients to invoke provisions of Order 21 Rule 90 C.P.C., any amount of argument without such material is of no use. The court below has considered these aspects and recorded a finding that the appellants neither pleaded the details of irregularity and fraud nor established them and on that ground held that there is no material to set aside the sale that was held on 22-12-2014.

I do not find any wrong appreciation of material in arriving at such a conclusion. The trial court has rightly appreciated the material on record and came to a right conclusion and that there are no grounds to interfere with the findings of the trial court.

For these reasons, the appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand

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Dvs.

Dvs