

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.496 & 708 of 2016

COMMON ORDER:

Heard the learned counsel for the petitioner and Sri Venkateswarlu Chakkilam, learned counsel for the 1st respondent.

2. Since the subject matter of both these Revision Petitions is interrelated and they both arise out of the same E.P. in the same suit, they are being disposed of by this common order.

3. The 1st respondent in both the revision petitions is the decree holder in the above suit. He filed the said suit against 2nd respondent herein for recovery of money and obtained an *ex parte* decree on 09-07-2015.

4. Thereafter, 1st respondent filed E.P.No.14 of 2015 on 26-08-2015 to recover a sum of Rs.17,59,200/- pleading that there is earlier attachment in I.A.No.1005 of 2014. It is not in dispute that the attached property was advertised for sale and publication of the sale notice was done on 16-11-2015. Thereafter, the petitioner in C.R.P.No.496 of 2016, who is the daughter of 2nd respondent, and petitioner in C.R.P.No.708 of 2016, who claimed to be the purchaser from the 2nd respondent, filed E.A.Nos.66 and 62 of 2015, respectively under Order 21 Rule 58 CPC

claiming interest in the property proposed to be sold.

5. However, the Court below passed order on 11-12-2015 in E.P.No.14 of 2015 stating that 1st respondent spent huge amount towards publication of the sale notice, that bidders were also present; and therefore it was not inclined to stop the sale, but would proceed to conduct the sale subject to the result of the claim petitions. It categorically stated that the sale would be subject to the result of the claim petitions and informed this fact to the bidders also.

6. Challenging the action of the Court below in not deciding the claim petitions, in proceeding to conduct the sale and giving directions to the successful bidders to deposit balance sale consideration and also value of the non-judicial stamps for engrossing on the sale certificate, C.R.P.No.496 of 2015 was filed.

7. The claim petition E.A.No.62 of 2015 filed by the petitioner in C.R.P.No.708 of 2016 was adjourned to 18-12-2015 by a docket order dt.11-12-2015 and this was questioned by the petitioner in C.R.P.No.708 of 2016.

8. Heard the learned counsel for the petitioner in both the Revision Petitions and the learned counsel for 1st respondent in both the Revision Petitions.

9. Learned counsel for the petitioners in the Revision Petitions contends that it was not open to the

executing Court to ignore the claim petitions filed by the petitioners in these two Revision Petitions, keep them pending and proceed to sell the property stating that the sale held would be subject to the result of the claim petitions.

10. Learned counsel for 1st respondent however refuted the above contentions and relied upon Order 21 Rule 59 (2) CPC and contended that if the property attached was already advertised for sale before the claim was preferred, it was open to the Court to stop the sale pending adjudication of the claim petitions or to proceed to sell the property pending such adjudication of the claim petitions and directing that the sale shall not be confirmed till the claim petition is adjudicated. He also drew my attention to the proviso to Order 21 Rule 92 (1) CPC which provides that where any property sold in execution of a decree pending the final disposal of any claim petition, the Court shall not confirm such sale until the final disposal of the such claim petition.

11. A perusal of the order dt.11-12-2015 passed in E.P.No.14 of 2015 indicates that the Court had decided to proceed with the sale subject to the result of the claim petitions on account of the fact that 1st respondent had spent some amount for the purpose of publication and the bidders were also present. However, while passing the said order, the Court did not state specifically that it is not

proceeding to confirm the sale in favour of the successful bidders pending disposal of the claim petitions. Its observation that the successful bidder should deposit the balance sale consideration and also deposit the value of the non-judicial stamps for engrossing the sale certificate gives an impression as if the Court below is proceeding to confirm the sale which is prohibited by the proviso to sub section (1) of Order 21 Rule 92 CPC.

12. In this view of the matter, the both Civil Revision Petitions are disposed of clarifying that the Court below shall not confirm the sale in favour of the successful bidders in the auction held by it on 11-12-2015 until the final disposal of the claim petitions filed by the petitioners in these Revision Petitions. The Court below is directed to complete the enquiry in the claim petitions E.A.Nos.62 and 66 of 2015 as expeditiously as possible preferably within three months from the date of receipt of a copy of this order. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2016

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