

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.3400 OF 2015

ORDER:

The Civil Revision Petition is filed against the order dated 25.02.2009 passed in E.A. No.604 of 2006 in E.P. No.69 of 1977 in O.S. No.19 of 1954 on the file of Principal Senior Civil Judge, Narasaraopet, Guntur District.

2) The unsuccessful petitioner, who is claiming as third party to the suit O.S. No.19 of 1954 and 2nd J.D.R in E.P. No.67 of 1977, filed E.A. No.604 of 2006 under Section 47 of C.P.C, to set aside the sale held on 08.08.1979 in respect of the petition schedule property. Before 08.08.1979 she impleaded as 8th JDr in E.P, which was maintained against four respondents, who are no other than decree holders, since D.Hr No.1 died his LR's were brought on record.

3) The averments of the petition are that Sitamma, no other than step mother of the D.Hr, by name Botla Rama Subbamma. The mother of the 1st respondent by name Laxmi Devamma and one sitamma are wives of one Govindaiah. Sitamma filed O.S. No.19 of 1954 against the husband of the Botla Rama Teerdhama i.e., Botla Venkata Krishna Rao and her father in law for partition of the properties of said Govindaiah. From Sitamma died Rama Subbamma came on record being the legal representative to represent the estate and obtained decree for partition and for past and future profits and for realisation of the same in E.P. No.69 of 1977. The property of Ac.4.62 cents brought to sale and the sale was held on 08.08.1979 and was confirmed later. However, there was fraud played in bringing the

property as on the date of auction, even when a market value of Rs.1,50,000/- per acre and with mis-description of the boundaries and recently she came to know about said auction sale and the fraud in maintaining the application. It is resisted by the D.Hrs supra respondents to said claim petition and after hearing both sides and from the evidence placed on record, the lower Court dismissed the same on 25.02.2009.

4) The observations therein show that E.P record discloses that on further order of sale notice and settlement of terms on sale proclamation, public auction was conducted in open Court on 08.08.1979 and D.Hr was permitted to participate on her own application and she participated in the auction and the bid was knocked in her favour as highest bidder and the sale was later confirmed. Thereafter, one Kota Subba Rao filed E.A No.89 of 1977 claiming to be a mortgagee of schedule property and the same was dismissed on merits on 23.08.1979 and again he filed O.S. No.649 of 1980 to set aside the impugned order dated 23.08.1977 passed in E.A. No.89 of 1977 in E.P. No.69 of 1977 and said suit was also dismissed on 10.02.1987. One Botla Anjaiah @ Veeranjanyulu filed suit O.S. No.31 of 1978 for partition of the very same property and filed petition restraining the defendants—respondents therein from getting the property to sale in E.P. No.69 of 1977 in O.S. No.19 of 1954 and the injunction petition in I.A. No.1276 of 1979 was dismissed. Aggrieved by the same, C.M.A. No.214 of 1979 was preferred before this Court and the original suit was later dismissed. Being aggrieved by said judgment in O.S. No.31 of 1978, said Veeranjanyulu preferred an appeal in A.S. No.772 of 1985 before this Court and also filed E.A.

Nos.375 of 1979 and 376 of 1979 and the said applications were ended in dismissal. It is in the meantime, present petitioner came up with a petition under Section 47 C.P.C in E.A. No.604 of 2006 in E.P. No.69 of 1977 with the allegation that the execution proceedings of sale held long back, but for confirmation of the sale remained and that there are no grounds to consider any alleged fraud in the proceedings, much less without her knowledge and from dismissal of the same on 25.02.2009, the revision petition is filed as referred supra.

5) Learned counsel for the revision petitioner reiterated the contentions in the grounds of revision impugning said order saying Section 47 C.P.C deals with execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Further, it is a claim of the revision petitioner that even the claim is taken under the provision and once fraud is alleged in obtaining the decree, it goes to the root of the matter including from Section 44 of the Indian Evidence Act to entertain the claim, the lower Court ought to have been allowed the petition instead of dismissing and thereby prayed to set aside the impugned order and allow the revision.

6) Whereas it is the submission of the learned counsel for the revision respondents that the order of the lower Court is supported by reasons and it no way requires interference much less within the limited scope for this Court while sitting is revision and hence prayed to dismiss the revision.

7) Heard both sides at length and perused the material on record.

8) The fact that she was brought on record as 8th J.Dr as one of the legal representative of her husband is not in dispute. Once such is the case, she cannot pretend that she has no knowledge. Leave the same as it is, the disputed auction sale conducted was way back on 08.08.1979 by the Court. Prima facie for there is no material, to say, it is a fraudulent outcome. Even to say the valuable property was sold in auction for a distress and utterly low price, there is nothing demonstrated by producing any property value register as on the date of sale, if it reflects any higher price. Thus, in the absence of which, it is highly unbelievable of any fraud played on Court. Apart from it, said E.A. No.604 of 2006 is filed after lapse of 27 years from said auction sale dated 08.08.1979. Thereby there are no grounds to interfere with the impugned order of the lower Court by sitting in revision

9) Accordingly and in the result the revision petition is dismissed. No order as to costs.

Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.23.09.2016
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