

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.2451 of 2016

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted for a declaration that the action of the 1st respondent/Bank of India in issuing e-auction notice on 25.12.2015, proposing to conduct e-auction sale on 29.01.2016 between 11.00 AM to 01.30 PM in so far as the immovable property comprising of Ac.0.23 guntas of land in survey No.970 out of a total extent of Ac.1.025 guntas situated at Khitalapur, Kukatpally Village and Municipality, Balanagar Mandal, Ranga Reddy District, as illegal.

The case of the petitioner is that one Neerudi Laxmaiah was the absolute owner and possessor of land admeasuring Ac.5.00 guntas situated in survey No.966, 967, 969 and 970 of Khitalapur, Balanagar Mandal, Ranga Reddy District. Laxmaiah's son by name Balaiah is said to have inherited the said property. Balaiah is stated to be having 3 sons and 3 daughters. One of the sons is the husband of the writ petitioner herein who expired somewhere in 1978. It is also stated that one of the daughters of Balaiah also expired. Upon the premises that the property is an ancestral one and consequently, all the members of the family are entitled to inherit it in their own right, being the members of the undivided joint family, it is urged that without the knowledge of other co-owners/coparceners, one of the daughters of Balaiah by name Balamani sold away land of an extent of Ac.1.01 guntas and again out of that extent of land Ac.0.23 guntas has been purchased by respondent Nos.2 and 3 herein. It is now stated that Sri N.Balaiah S/o. N.Laxmaiah and Smt. N.Padma, the daughter of N.Balaiah filed a civil suit O.S.No.378 of 2005 on the file of I Additional District Judge's Court at Ranga Reddy District seeking partition of the ancestral property. That suit was dismissed upon contest on 29.10.2012. There against A.S.No.114 of 2013 appears to have been preferred to this Court. There appears to have been passed

an interlocutory order therein directing the parties to maintain *status quo*.

Now it is contended that contrary to the orders passed by this Court in A.S.No.114 of 2013, the 1st respondent/Bank is proposing to liquidate the said asset as a measure of realization of its debt. Hence, this writ petition is instituted.

Respondent Nos.2 and 3 are the borrowers of the 1st respondent/Bank. They have purchased certain extent of immovable property comprising of Ac.0.23 guntas of land over which property, they have created security interest in favour of the 1st respondent/Bank for availing certain financial benefits. Since they have committed default in repayment, their loan account has become a Non Performing Asset and consequently, the 1st respondent/Bank is now taking steps under Section 13 read with Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). It is at that stage, the present writ petition is filed. Firstly, the petitioner has no relationship with the 1st respondent/Bank, she is totally a stranger. The relationship between respondent Nos.2 and 3 on one hand and the 1st respondent/Bank on the other is that of a debtor and creditor. The 1st respondent/Bank, which answers the description of 'Bank' as defined under Section 2(1)(c) of the Act has been empowered to take securitization measures under Section 13 read with 14 of the Act, as a measure of realising the debt due to it.

The order of *status quo* passed by this Court in A.S.No.114 of 2013 on 26.08.2013 does not come in any way of the 1st respondent/Bank in liquidating the security interest created by respondent Nos.2 and 3 in its favour, inasmuch as the sale of this land, which was purchased by respondent Nos.2 and 3, took place much prior to the said date. We are, therefore, of the opinion that the contention canvassed in this writ petition by the petitioner is untenable.

Even otherwise, while working out equities in a partition suit, the petitioner herein is always entitled to bring it to the notice of the Court the

subsequent developments that have taken place after the decree is passed by the trial Court and ask the appellate Court to work out the equities accordingly. Therefore, no way the interest of the petitioner is going to be jeopardised by the measures undertaken by the 1st respondent/Bank in liquidating the security interest created in its favour by respondent Nos.2 and 3.

Subject to the observations made supra, this writ petition stands disposed of.

Consequently, miscellaneous petitions, if any shall stand closed.
No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

10.03.2016
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