

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

W.P.No. 23099 OF 2016

DATED 06TH SEPTEMBER, 2016

Between:

Kedarsetti Sesharao

... Petitioner

AND

Indian Overseas Bank,
Tapeswaram, Mandapeta Mandal,
East Godavari District,
Rep. by its authorized officer, and others

... Respondents

Counsel for the petitioner

:

Sri S.Siva Bhami Reddy

Counsel for respondent Nos. 1 & 2

:

Sri K.Suryanarayana

Counsel for respondent Nos. 3 & 4

:

Sri E.V.V.SRavi Kumar

THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for issue of *mandamus* to declare the e-auction – cum – sale notice dated 16-06-2016 issued by respondent No. 1 proposing to auction house property bearing Door No. 34-20-1, Pardasaradhi Nagar, Mandapeta, East Godavari District, as illegal and arbitrary.

2. At the hearing, learned counsel for respondent Nos. 1 and 2 – Bank, on instructions, submitted that in pursuance of the impugned e-auction – cum – sale notice, no auction could be held. Therefore, the cause on which the petitioner has filed this Writ Petition does not survive for adjudication. However, the grievance raised by the petitioner in this Writ Petition is likely to recur if and when respondent Nos. 1 and 2 initiate fresh steps for sale of the property. Therefore, we feel it appropriate to deal with the grievance of the petitioner in brief. His case is that he has filed two suits, namely; O.S.Nos. 127 and 128 of 2008 on the file of the Court of Junior Civil Judge, Alamuru (for short, 'the lower Court'), against respondent Nos. 3 and 4 respectively for passing of preliminary decrees based on two registered mortgage deeds dated 09-06-2000. That respondent No. 2 is impleaded as defendant No. 2 in the said suits. That under judgments dated 01-05-2014, preliminary decrees were passed. The petitioner further pleaded that on 07-05-2015, final decrees were passed and he has filed E.P.Nos. 50 and 51 of 2015 for sale of the mortgaged properties, which are 25 square yards in each of the two cases, which were also mortgaged by respondent Nos. 3 and 4 to respondent No. 2 after the said properties were mortgaged to the petitioner. While the E.Ps. were pending, the impugned auction notice was issued for sale of 99.50 square yards which include the extent of 50 square yards in respect of which mortgage decrees have been passed in favour of the petitioner. In support of these pleas, the petitioner has filed both

preliminary and final decrees in O.S.Nos. 127 and 128 of 2008 and also copies of the execution petitions.

3. Learned counsel for respondent Nos. 1 and 2 has not disputed the claim of the petitioner that the extent of 50 square yards, out of 99.50 square yards, were mortgaged to the petitioner and final decrees were passed in respect of the said properties against respondent Nos. 3 and 4 in the suits to which respondent No. 2 is a party.

4. In these undisputed facts of the case, this Court, *prima facie*, feels that respondent No. 1 cannot sell the extent of 50 square yards of the land property, under mortgage to the petitioner, in respect of which mortgage decrees have been passed. However, this Court feels that, instead of rendering conclusive findings on this aspect, it is appropriate if the petitioner is permitted to make a representation to respondent Nos. 1 and 2 by pleading relevant facts and supported by proper documentary evidence within one month from today. On such representation being made, respondent Nos. 1 and 2 are directed to consider the same and exclude the property if the petitioner is able to show that the same is covered by the mortgage decrees passed by the lower Court. They shall pass appropriate order and communicate the same to the petitioner before they proceed with fresh auction sale.

5. Subject to the above direction, the Writ Petition is disposed of.

6. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 28435 of 2016 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD, J.

Date: 06-09-2016.

JSK

