

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4050 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 19.06.2016 in E.P.No.4 of 2013 in O.S.No.18 of 1987 passed by the Senior Civil Judge, Sompeta, whereby notice under Order XXI Rule 34 C.P.C. was directed to be issued to the petitioners herein/judgment debtors to realize the amount due under decree passed in favour of the 1st respondent/decree holder.

2. For convenience of reference, the ranks given to the parties before the trial Court in E.P.No.4 of 2013 in O.S.No.18 of 1987 will be adopted throughout the order.

It is the case of the petitioner/decree holder that the respondents/judgment debtors purchased 3/5th undivided share of his vendors i.e., respondents 1 to 3 under agreement of sale and therefore the petitioner/decree holder filed a suit for specific performance and obtained a decree directing respondents 1 to 3 to execute registered sale deed in his favour. But, the judgment debtors did not execute the same. Therefore, the decree holder initiated execution proceedings by issuing notice under Order XXI Rule 34 C.P.C., i.e., decree notice. The judgment debtors filed their objections raising several contentions. But, those contentions were overturned by the executing Court and it directed to issue notice under Order XXI Rule 34 C.P.C., for execution of registered document by the judgment debtors while calling for objections in writing etc.

3. The judgment debtors filed objections before the executing Court as the property purchased by the decree holder is undivided 3/5th share in the decree schedule property. In the absence of any specific boundaries, the decree is not executable and no document can be executed conveying undivided 3/5th share in the joint family property. No doubt, the property purchased by the decree holder is undivided 3/5th share in the joint family property and there is no fetter against the said purchase and if the same is purchased by a third party, he will become a tenant in common and entitled to file a suit for partition or if any suit is filed against any other co-sharer, he can claim equities to allot such share. Therefore, there is absolutely no bar against purchase of the property and obtaining registered sale deed for undivided 3/5th share in the joint family property. Hence, the executing Court has rightly rejected the objections raised by the judgment debtors and this Court cannot interfere with the same exercising power under Article 227 of the Constitution of India.

4. In the result, the Civil Revision Petition is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Civil Revision Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:01.09.2016

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