

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION Nos.3263 & 3378 Of 2017

COMMON ORDER:

1 These two Civil Revision Petitions are filed assailing the common order dated 03.04.2017 passed in I.A.No.429 of 2016 and I.A.No. 582 of 2017 both in O.S.No.25 of 2016 on the file of the Court of the Principal District Judge, Khammam wherein and whereby the petitions filed by the first respondent herein under 38 Rules 1 and 2 CPC seeking a direction to the petitioner herein to furnish personal security or third party security to the suit claim and for order of attachment of the petition schedule property before judgment subject to the prior mortgage existing in favour of A.P. Grameena Vikas Bank were allowed.

2 Since the point involved in these two Civil Revision Petitions is interrelated these two Civil Revision Petitions are disposed of by this common order.

3 The learned counsel for the petitioner submitted that the trial court without taking into consideration the fact that the property was already mortgaged to the bank, attached the property of the petitioner. He further submitted that the order of the trial court is not sustainable either on facts or in law in view of the nature of the suit.

4 A perusal of the record reveals that the first respondent herein filed O.S.No.25 of 2016 on the file of the Court of the Principal District Judge, Khammam against the petitioner and respondent Nos.2 and 3 for recovery of suit amount basing on the agreement of sale dated 13.3.2013. It is the case of the first respondent that the first respondent paid 1/4th of the sale consideration which comes to

Rs.12,15,000/- to the petitioner. Before filing of the suit, legal notices were exchanged between the parties. For one reason or the other, the petitioner did not choose either to execute the sale deed or return the advance money. Having no other alternative, the first respondent filed the suit for recovery of the suit amount. However, in the suit no relief is sought against the respondent Nos.2 and 3. Along with the suit, the first respondent filed I.A.No.429 of 2016 under Order 38 Rules 1 and 2 CPC seeking a direction to the petitioner to furnish personal security or third party security to the suit claim. For one reason or the other, the petitioner did not choose to furnish security. Hence the first respondent filed I.A.No.582 of 2017 under Order 38 Rule 5 CPC for attachment of the property. The first respondent filed counters in both the petitions, inter alia contending that the property in question was already mortgaged to A.P. Grameena Vikas Bank.

5 When the Court issued show cause notice, it is the duty of the petitioner to furnish security. For the reasons best known to him, the petitioner did not furnish security. Hence the trial court, having no other alternative, attached the petition schedule property before judgment subject to prior mortgage with the bank.

6 The trial court considered various aspects and ordered attachment of the property in order to protect the interest of the first respondent. If the petitioner alienate the property after clearing the mortgage debt, it may not be possible for the first respondent to recover the suit amount in the event of allowing the suit. It is the duty of the Court to strike a balance between the parties. The trial court has assigned reasons much less valid and cogent reasons while

allowing the petitions. I am fully agreeing with the findings recorded by the trial court. Viewed from any angle, there are no merits in these Civil Revision Petitions warranting interference of this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

7 Hence these two Civil Revision Petitions are dismissed. No costs. As a sequel, miscellaneous petitions, if any, pending in these two Civil Revision Petitions shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 01.09.2017

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