

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.6135 of 2012

ORDER:

Respondents 2 to 4, who are judgment debtors 3 to 5, in E.P. No.62 of 2008 on the file of Senior Civil Judge, Narsapur, West Godavari District filed for execution of mortgage final decree pursuant to the preliminary decree in O.S. No.82 of 2006 by the 1st respondent/D.Hr, endorsed as not necessary parties to the present revision maintained by J.Drs 1 and 2 of the said E.P, filed against the order dated 25.09.2012 passed by the Senior Civil Judge, Narsapur.

2) Heard learned counsel for revision petitioners/ judgment debtor Nos.1 and 2 and learned counsel for 1st respondent/D.Hr and perused the impugned order of the learned Senior Civil Judge.

3) The 1st respondent bank obtained a mortgage preliminary decree in the suit against the five J.Drs covered by plaint schedule two items of the immovable property of which item No.1 consists of 2 extents as A and B. Pursuant to which, there is a mortgage final decree against the property and person extinguishing the right of redemption for non-payment by the defendants/ J.Drs pursuant to the preliminary decree within the period of redemption fixed by the Court under Order XXXIV Rules 14 & 15. It is pursuant to which the property covered by mortgage in E.P. No.62 of 2008 sought for sale by proclamation under Order XXI Rules 66 & 64 CPC. At that stage, the objection raised by the J.Drs is that out of the mortgage property consisting of the two extents in item No.1 (A and B) and another extent in item No.2, the so-called item No.2 despite

it is under mortgage with the bank, was brought to sale by another simple money D.Hr by attachment and in the said sale after satisfying with said money decree debt, there is amount lying to the credit of the E.P No.6 of 2005 in O.S. No.193 of 2003 on the file of self same Court i.e., the Court of Senior Civil Judge, Narsapur, and the bank also sought for attachment and withholding of the said money covered by sale of said item, which is also subject matter of the equitable mortgage final decree, in favour of the bank and said amount itself is suffice to satisfy the Banks mortgage final decree debt.

4) That amount as can be seen from the record is lying to the credit of said E.P., which is about Rs.9,05,000/-. Once such is the case, leave about the fact that even a third party claim raised for the property that was ended in dismissal and he went unsuccessful even in appeal against that dismissal order in his claim, from anything is subject to satisfying the mortgage debt and the mortgage debt in the present E.P. No.62 of 2008 on the file of execution Court is not above to the said deposit lying in E.P. No.6 of 2005, leave about right of the bank always available after adjustment of the amount, if at all, for anything due to proceed against the remaining properties covered by the equitable mortgage without giving up any such right, the executing Court should have invoked Section 47 C.P.C read with Order XXI Rules 1 & 2 CPC for sending for that amount to the credit of present E.P. No.62 of 2008 before it, to satisfy the mortgage final decree debt of the D.Hr Bank without any need of bringing the properties to sale but for if at all not satisfied with the amount for anything remaining to pay, that too, only to the extent of any of the items or part of it, necessary to

sell as contemplated by Rule 64 of Order XXI CPC for the executing Court so to proceed.

5) With these observations, the CRP is allowed by setting aside the order of the lower Court with a direction to send for the amount and pay to the DHr Bank and record full or part satisfaction and for anything still remains to recover to proceed with the E.P as stated above, which is without prejudice to all available rights of the D.Hr bank.

Consequently, miscellaneous petitions, if any pending in this revision shall stand closed. There shall be no order as to costs.

Date: 10.11.2017
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JUSTICE Dr. B.SIVA SANKARA RAO



