

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**C.R.P.No.2532 of 2017****ORDER:**

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.01-06-2017 in C.M.A.No.41 of 2015 of the IV Additional District Judge, Tanuku confirming the order dt.11-11-2012 in E.A.No.140 of 2009 in E.P.No.262 of 2006 in O.S.No.627 of 2005 of the I Additional Junior Civil Judge, Tanuku.

3. The petitioners /J.Drs. are husband and wife.

4. The property belonging to the petitioners was sold in a public auction on 19-02-2009 in E.P.No.202 of 2006 on the file of the I Additional Junior Civil Judge at Tanuku in execution of decree for recovery of money obtained by the respondent no.1.

5. E.A.No.140 of 2004 was filed by the petitioners under Order 21 Rule 90 CPC to set aside the said sale on the ground that the property was sold on the said day in their absence and without notice to them; that there were serious material irregularities committed by 1st respondent in collusion with the 2nd respondent in the conduct of the sale; no wide publicity was given and there was no publicity by making tom tom in Tanuku town where the E.P. schedule property

was situated. It was contended that all the witnesses who participated in the auction were close relatives of the decree holder and though the market value of the property was Rs.14.00 lakhs, the sale was knocked down for just Rs.4.00 lakhs subject to mortgage in collusion with the bankers. They contended that the upset price was fixed at Rs.3,28,000/- though the total sale value was Rs.8.00 lakhs and that to recover the decree amount of Rs.62,132/-, the whole property could not have been sold.

6. The 2nd respondent auction purchaser filed a counter denying the allegations of the petitioners. He stated that there were no material irregularities committed in the conduct of the sale; that petitioners were aware of the proceedings though they were living in Hyderabad; that they did not appear before the Court deliberately even though wide publicity by way of publication in newspaper and also by way of beat of tom tom was made. According to him, the petitioners had abandoned the E.P. schedule property for a long time prior to the sale, that it was in a damaged condition and its wooden doors, frames and windows were badly affected and eaten by white ants. He denied that E.P. schedule property was worth Rs.14.00 lakhs and stated that the upset price was rightly fixed at Rs.3,28,000/-, that he had deposited 1/4th of the bid amount along with poundage on 19-02-2009 and paid the balance consideration on 26-02-2009 within 14 days apart from depositing Rs.20,000/- towards stamp duty through challans. He contended that when the matter was coming up for

confirmation of sale, only with a view to drag on the matter, this application is filed without any reasonable grounds.

7. The 1st respondent D.Hr. adopted the counter of the 2nd respondent.

8. By order dt.20-11-2012, the I Additional Junior Civil Judge, Tanuku, dismissed the E.A.

9. She held that though the 1st petitioner was the husband of the 2nd petitioner, 2nd petitioner had not given any written authorization to him to give evidence; that there is no evidence placed on record to show that the property in question would fetch Rs.14.00 lakhs as alleged by the petitioners; and the evidence of the respondents indicated that the door frames and windows were damaged due to white ants and it was under lock and key as it was under a mortgage to the State Bank of India, Tanuku and was kept abandoned. It was held that there was adequate publicity of the public auction by the decree holder as it was published in the Vennela newspaper which was a recognized newspaper; that petitioners had filed Vakalat in the main E.P.; that they were set *ex parte* on 27-07-2011 for not filing their counter and for not paying costs; that they did not deliberately filed their counter for a period of two years till the sale was conducted by the Court; and they failed to discharge the burden cast on them to prove that there was any material irregularity in the sale.

10. Challenging the same, the petitioners filed C.M.A.No.41 of 2015 before the IV Additional District Judge, Tanuku.

11. The lower appellate Court also dismissed it. It held that in his cross examination, the 1st petitioner as P.W.1 admitted that he engaged a counsel to contest the matter; therefore he had notice of the public auction and was aware of the value of the property shown in the sale proclamation; that he had not let any evidence to support his plea that the value of the property was Rs.14.00 lakhs. It also held that evidence of R.Ws.2 and 3 indicated that there was publication by beat of tom tom in Tanuku and they had come to know of it through the said tom tom. It therefore held that there was no material irregularity in the conduct of sale by the trial Court and that the trial Court has given valid reasons for dismissing the E.A.

12. It is the case of the petitioners that the property was sold for a very less value. They should *prima facie* lead evidence to show what the market value of the property was on the date when the public auction was conducted by the Court, but they did not do. Though the learned counsel for the petitioners sought to contend that the courts below erred in not setting aside the and that the sale was not vitiated by material irregularity or fraud, he could not place any material even before this Court to show that the value of the E.P. schedule property was Rs.14.00 lakhs as claimed by the petitioners.

13. That apart, the evidence on record of R.Ws.2 and 3 shows that there was publicity by tom tom in Tanuku town about public auction and there was also proper publication in Vennela newspaper about the said public auction.

14. Therefore, I am of the opinion that the concurrent findings of fact of both the executing Court as well as the lower appellate Court that there was no material irregularity or fraud in the conduct of the sale, does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

15. Accordingly, the Civil Revision Petition is dismissed.
No costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-06-2017
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