

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.979 of 2016

ORDER:

This revision, under Section 115 of the Code of Civil Procedure, 1908, is filed by the unsuccessful petitioner/judgment debtor assailing the orders dated, 19.01.2016, passed by the executing Court in E.A.No.106 of 2015 filed by the Judgment Debtor requesting to set aside the order, dated 10.06.2015, in E.A.No.133 of 2009 filed by the auction purchaser requesting to order delivery of the EP schedule property.

2. I have heard the submissions of *Sri A.Prabhakar Rao*, learned counsel for the JDr/ petitioner (hereinafter, 'JDr') and of *Sri K.Subba Rao*, learned counsel appearing for the decree holder/ 1st respondent (hereinafter, 'DHr') and the auction purchaser/ 2nd respondent (hereinafter, 'auction purchaser').

3. Before proceeding further, it is necessary to refer to the pleadings of the parties.

3.1 The case of the JDr, in brief, is this:

The DHr having obtained a decree for money against the JDr filed the EP for the realization of the decree debt by sale of the EP schedule house property. The property was put to auction without following the procedure under Rule 54 of Order XXI of the Code. No notice was issued to the JDr and the valuation of the property was not ascertained before the sale notice was issued and the sale proclamation and publication were made. The JDr's daughters filed an execution application under Order XXI Rule 97 read with Section 151 of the Code. The said petition was dismissed by the executing Court. The daughters of the JDr filed an appeal. E.A.No.133 of 2009 was filed by the auction purchaser for delivery of the property. This JDr engaged an advocate and entered appearance. On 10.06.2015, the executing Court

without hearing the counsel of the JDr passed an order directing delivery of possession of the EP schedule property to the auction purchaser. The counsel of the JDr underwent a heart operation and, therefore, the counsel for the JDr could not represent the JDr in E.A.No.133 of 2009 filed by the auction purchaser. However, the executing Court erroneously allowed the petition of the auction purchaser on 10.06.2015 and directed for issuance of warrant of delivery for delivering possession of the EP schedule property to the auction purchaser. The JDr obtained certified copy of the said order. The executing Court passed the order as if the JDr is not represented by an advocate. Hence, the JDr filed the subject E.A.No.106 of 2015 to set aside the order dated 10.06.2015 whereby, the executing Court directed issuance of delivery warrant.

3.2 The auction purchaser and the DHr resisted the application of the JDr by stating the chronology of events upto the confirmation of sale.

4. On merits and by the order impugned in this revision, the executing Court dismissed the execution application in EA No.106 of 2015 filed by the JDr and refused to recall its orders directing issuance of delivery warrant for delivery of the property to the auction purchaser. Therefore, the aggrieved JDr filed this revision petition.

5. At the hearing, the learned counsel for the JDr and the learned counsel for the DHr and the auction purchaser reiterated the respective contentions of the parties.

6. The learned counsel for the JDr would submit that the JDr engaged a counsel to represent him in the execution proceedings and that his counsel underwent a heart operation and, therefore, could not attend before the executing Court and represent the case of the JDr and that the executing Court erroneously allowed the application of the auction purchaser and directed

issuance of the delivery warrant and that therefore, the JDr was constrained to file an application to recall the said orders, but the executing Court dismissed the petition taking into consideration extraneous matters and without properly appreciating the case of the JDr.

7. On the contrary, the learned counsel for the DHr and the auction purchaser supported the orders of the Court below by bringing to the notice of the Court the chronology of events.

8. I have given detailed and thoughtful consideration to the facts and submissions.

9. To begin with, it is necessary to refer to the facts and the chronology of events, which are as follows:

The DHr obtained a decree for money against the JDr and filed E.P.No.152 of 2005 for realization of the decree debt by sale of the immovable property/ RCC building of the judgment debtor, i.e., EP schedule property, which was already attached before judgment, during the pendency of the suit. E.A.57 of 2008 and E.A 58 of 2008 filed by the JDr were dismissed on 31.07.2008 and eventually, the sale was held on 01.08.2008 and was knocked down in favour of the auction purchaser. The auction purchaser deposited the required amounts and the sale was confirmed on 05.09.2008 and sale certificate was issued to the auction purchaser on 12.09.2008. While so, the daughters of the JDr filed E.A.No.212 of 2010 under Order XXI Rule 97 read with Section 151 of the Code *inter alia* claiming that they are having a 6/5th share in the RCC building, i.e., the EP schedule property. However, by orders dated 10.04.2015, the executing Court dismissed the said E.A.No.212 of 2010 *inter alia* holding that the certified copy of the registered sale deed exhibited as R1 reflects that the JDr was allotted Plot No.20 being the member of Teachers Cooperative Housing Society and that the 1st petitioner-PW1 therein stated in her evidence that she has no proof to show that the grandfather

invested joint family funds for purchasing the Plot and that on the other hand, she had stated that the LIC housing loan amount was discharged by her father/ JDr and that she does not have any proof to show that the EP schedule property is joint family property. Aggrieved thereby, the petitioners therein/ the claim petitioners filed an unregistered appeal assailing the aforestated orders of the executing Court passed in E.A.No.212 of 2010. However, as a delay of (64) days had occasioned, the daughters of the JDr filed I.A.No.1391 of 2015 for condonation of the said delay in filing the said unregistered appeal. The application for condonation of delay was dismissed by the learned Principal District Judge, Warangal. The daughters of the JDr preferred C.R.P.No.1269 of 2016 before this Court. This Court, by separate orders made today, dismissed the said CRP filed by the daughters of the JDr. The JDr also filed E.A.No.95 of 2008 under Order XXI Rule 90 read with Section 151 of the Code for setting aside the sale held on 01.08.2008. The executing Court dismissed the said EA on 04.08.2009. The CMA 100 of 2010 preferred by the JDr was dismissed by the learned Additional District Judge on 21.09.2012. Therefore, the JDr preferred C.R.P.No.4015 of 2015 before this Court. The executing Court and the Additional District Court concurrently held that there are no irregularities in conducting the sale on 01.08.2008. It is an undisputed fact that the sale was confirmed on 05.09.2008 and that later, a sale certificate was also issued to the auction purchaser on 12.09.2008. Today, this Court by separate orders made in C.R.P.No.4015 of 2015, dismissed the said revision. Thus, the claim petition filed by the daughters of the JDr was dismissed and the said order of the executing Court has become final. Further, all the petitions of the JDr were also dismissed. There are no impediments therefore for delivering the EP schedule property to the auction purchaser. The auction purchaser expressed willingness to take the property subject to the mortgage debt, if any, and expressed preparedness to discharge the said mortgage debt said to be due to the LIC as any sale of a mortgaged property

would be subject to the mortgage and the purchaser is liable to discharge the mortgage debt. In fact, in the application filed by the auction purchaser for delivery of the property, the JDr filed a counter stating that his daughters filed a claim petition. However, the said claim petition was dismissed by the executing Court and the unregistered appeal in ASSR No. 4032 of 2015 preferred by the daughters of the JDr was rejected by the Principal District Court, Warangal after dismissing the application filed for condonation of the delay in preferring the appeal. The CRP 1269 of 2016 preferred by the daughters of the JDr is dismissed today by this Court by separate orders made in that revision. In that view of the matter, there no impediments for ordering delivery of the property to the auction purchaser.

10. Viewed thus, this Court finds that the executing Court is justified in allowing the application of the auction purchaser and in directing the issuance of delivery warrant for delivery of possession of the EP schedule property to the auction purchaser. Accordingly, this Court finds that there is no merit in the revision and that the revision petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

07th February, 2017
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M. SEETHARAMA MURTI, J