

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3006 of 2017

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed challenging the order dated 14.12.2016 in CFR No.420 of 2016 in EP No.4 of 2008 passed by the Senior Civil Judge, Zaheerabad, whereby the learned Senior Civil Judge rejected the CFR on the following grounds:
(extracted)

- 1. The petitioner is not the party to the proceedings and he is not brought on record as alleged L.R. of the 2nd judgment debtor. As such, he has no locus stand to present the present petition in my considered view further the petitioner does not say as to what is his interest in the property sold.**
- 2. The petition has to be filed under Rule 89 of Order XX! CPC within sixty days from the date of sale. Here as seen from the petition itself, the sale was held on 17.04.2006. As such the petition itself barred by time under Article 127 of Limitation At.**
- 3. Further as is found that already sale certificate is issued and matter stands posted for delivery of auctioned property.**
- 4. Entire sale warrant amount as on the date of the sale is not deposited.**

The revision petitioner filed a petition under Section 151 CPC alleging that petitioner No.2 is the wife, and petitioners 3 & 4 are the sons, of judgment debtor No.3, who were not impleaded to the execution proceedings filed for realisation of debt due under the decree in O.S. No.23 of 2001, deposited an amount of Rs.2,48,438/- by way of demand draft No.928058 dated 10.10.2016 drawn on Andhra Bank, in favour of Senior Civil Judge, Zaheerabad, Medak District, and requested the executing court to accept the amount and cancel the sale conducted on 17.04.2006 i.e. the property House No.2-5-27, Rachannapet,

Zaheerabad, Medak District, permitting the petitioners to claim attachment of properties of judgment debtors 1 and 2.

The executing court rejected the petition on the ground stated above.

Heard the learned counsel for the petitioners at the stage of admission.

It is evident from the petition that he tendered the decretal amount after confirmation of sale on 21.09.2016.

The main contention of the petitioners 2 to 4 is that they are not aware about the date of auction, because they are not parties to the execution proceedings.

Limitation to set aside the sale in execution of a decree including any application by a judgment debtor starts from the date of auction, but not from the date of knowledge under Article 127 of the Limitation Act, 1963. Therefore, the contention that he is not aware of proceedings is without any substance.

Yet another contention raised by the counsel for the petitioners is that one Rukkamma, mother of the petitioners 3 and 4 filed an application under Rule 58 of Order XXI CPC and the same was allowed setting aside the sale, while directing the repayment of amount in E.A. No.11 of 2008 dated 29.07.2013 and thereafter the matter was carried in appeal in CMA No.14 of 2014 and the appellate court by order and decretal order dated 21.01.2015 set aside the order dated 29.07.2013 passed in E.A. No.11 of 2008, while directing the executing court to proceed further in accordance with the procedure under Order XXI CPC. Accordingly the executing court proceeded further and confirmed the sale by order dated 21.09.2016 i.e. almost after one year eight months from the date of order dated 21.01.2015.

Therefore, when the sale is confirmed and sale certificate is yet to be issued, a petition either to record full satisfaction under Rule 2 of Order XXI CPC or a petition to set aside the sale under Rule 89 of Order XXI CPC cannot be entertained. Therefore, on this ground the sale cannot be set aside or full satisfaction cannot be recorded.

One of the grounds urged before this court is that the petitioners were not made as a party and the sale of property without impleading them is against the principles of natural justice and it is not binding on the petitioners.

A similar question came up before the Apex Court in **Prabhakara Adiga v. Gowri and Ors**¹ wherein it was held that when a judgment debtor died before the decree has been satisfied, it can be executed against the legal representatives. Section 50 of CPC is not confined to a particular kind of decree.

Though the facts are different, the principle laid down in the above judgment is that the court can proceed against the legal heirs even without impleading them as parties exercising power under Order XXII CPC by separate application. Therefore, it is not a ground to set aside the order under challenge before this court.

The executing court rejected the petition on four grounds. The first ground appears to be in correct. So far as the second ground is concerned, the amount was deposited long after sale and hence the petition under Rule 89 of Order XXI CPC is barred by limitation under Article 127 of the Limitation Act which deals with the limitation to set aside a sale in execution of a decree including any such application by a judgment-debtor. The limitation to file such application starts from the date of sale only. Therefore, the

¹ AIR 2017 SC 1061

application by the judgment debtor to set aside the sale shall be filed within 60 days. But here the petitioners were not the judgment debtors, but the legal representative of the judgment debtor within Section 50 of CPC. Therefore, by applying the principle laid down by the Apex Court in **Prabhakara Adiga v. Gowri and Ors** referred supra, the order passed by the trial court cannot be found fault.

The sale was confirmed and the sale certificate is yet to be issued after confirmation of the sale, the sale cannot be set aside either under Rule 89 or 90 of Order XXI of CPC or to record full satisfaction under Rule 2 of Order XXI of CPC.

The executing court by an order dated 21.09.2016 confirmed the sale held on 17.04.2016 while directing the decree holder to return Rs.3,07,100/- to the judgment debtor No.3. But the said amount was not returned. The petitioner is at liberty to take steps before the executing court in terms of the direction dated 21.09.2016, but it is not a ground to set aside the sale.

In view of the aforesaid discussion, I find no ground to interfere with the order under challenge and hence the petition is liable to be dismissed

In the result, the civil revision petition is dismissed. No costs.

Miscellaneous Petitions, if any, pending in the civil revision petition shall stand closed.

M.SATYANARAYANA MURTHY,J

Date:05.07.2017
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