

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.5517 OF 2016

ORDER:

Heard Mr.Y.Sinivasa Murthy for petitioner and Mr.J.Janaki Rami Reddy for respondent.

The judgment debtor in EP.No.174 of 2013 in O.S.No.303 of 2005 in the Court of the Additional Senior Civil Judge, Kurnool is the revision petitioner. The executing Court through the order impugned in the revision brought to sale the EP schedule property.

The respondent filed O.S.No.303 of 2005 against the petitioner herein for recovery of Rs.1,01,233/-. On 13.03.2006, the suit was decreed. The respondent filed EP.No.174 of 2013 under Order XXI Rules 54, 64, 66 and 68 of the Civil Procedure Code for executing the decree dated 13.03.2006. The case of respondent is that the revision petitioner in spite of having movable and immovable properties did not discharge the liability under the decree in O.S.No.303 of 2005. The EP schedule property is worth about Rs.10 lakhs. Hence, the prayer for attachment and sale for recovering the decretal amount.

The revision petitioner resisted the EP by contending that he is a vegetable vendor and has no means to pay the decree amount. In EP.No.87 of 2010 in O.S.No.303 of 2005, the means or ability to pay is decided by the executing Court. The EP schedule property is Government assigned land, by operation of Sections 3 and 4 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'), the sale of assigned land through process of law is also

prohibited. Therefore, the petitioner prays for dismissing the EP. By way of reply, the case of respondent is that the EP schedule property firstly is not assigned land and secondly, the revision petitioner and his wife through registered sale deed dated 22.02.1997 have purchased the EP schedule property from Zeenath Bi and her son Mahaboob Basha i.e., sister and nephew of revision petitioner. On 06.12.2003, the said property was mortgaged to respondent/DHr. As petitioners did not discharge the mortgage debt, the petitioner filed O.S.No.1344 of 2005 on the file of the II-Additional Junior Civil Judge, Kurnool. The suit was decreed. It is further contended that sale of assigned land after 10 years is permissible, for the very xerox copy of assignment refers to purchase by paying consideration from the Government. Therefore, by way of reply it is contended that EP schedule property is available for sale and no exception can be taken.

The executing Court framed the following points for consideration:

- (a) whether the EP schedule property is a Government property being assigned land and is not alienable as contended by respondent/judgment debtor? and
- (b) whether the petitioner/decreed holder can be permitted to proceed against the EP schedule property on the ground that it belongs to respondent/judgment debtor?

The parties were examined as R.W.1 and P.W.1 respectively and Exs.R-1 to R-4 and Exs.P-1 to P-4 were marked on their behalf.

The executing Court answered both the points against revision petitioner and ordered the EP. Hence, the revision.

Mr.Y.Srinivasa Murthy vehemently contends that the executing Court committed serious illegality and infirmity by ordering sale of EP schedule property. According to him, the EP schedule property is an assigned house plot in favour of vendor of revision petitioner. The prohibition under Section 3 of the Act is absolute and attracted to a Court sale as well. Even if the assignment was for consideration, still the prohibition under the Act is attracted. Either the executing Court or this Court ought not to facilitate the sale of a property prohibited by Act 9 of 1977. He places strong reliance upon the following decisions:

- 1) GONTLA KRISHNA MURTHY V. SMT.V.LAKSHMI DEVI¹
- 2) M.ANUMAKKA AND ANOTHER V. TURPU GOPAL REDDY²
- 3) KAKUTURU RAMANAMMA AND OTHERS V. ARIGUNDRAM SARALAMMA AND ANOTHER³
- 4) UNDELA DURGAMMA V. SINGAM REDDY LAKSHMI REDDY⁴

He prays for setting aside the EP.

Mr.J.Janakirami Reddy contends that the plea of prohibition against alienation is a convenient plea raised by the revision petitioner. This plea cannot be put forward by the revision petitioner, inasmuch as the prohibition now stated against sale of property is very much applicable and attracted when the petitioner through Ex.P-1 purchased the EP schedule and through Ex.P-2 mortgaged the same in favour of respondent herein. As prohibition under Act 9 of 1977 is not attracted, the JDrs purchased from original vendor

¹ 2009(3) ALT 560

² 2009(4) ALT 401

³ 2011(2) ALT 347

⁴ 2012(2) ALD 133

and mortgaged to DHR. The objections now raised are without proof of basic documents i.e., assignment order, in the sense the petitioner has not discharged the burden that EP schedule property is assigned land. According to him, the xerox copy filed in EP.No.87 of 2010 cannot be relied upon or the certified copy given by the executing Court cannot be treated as primary evidence of ordering assignment in favour of petitioner. According to him, these documents are cooked up and fabricated, for while granting assignment of house plots door numbers are not assigned but plot numbers are assigned and thereafter permission is obtained for construction and door number is assigned to a constructed house. In the case on hand, the door number is assigned in the xerox copy of assignment order and no certified copy from the revenue department is filed. He places strong reliance upon the consideration of this aspect by the executing Court while answering the points referred to above and contends that the legal objections raised are completely unavailable and EP was rightly ordered. He prays for dismissing the revision.

I have taken note of the respective submissions and in the considered view of this Court, the submissions canvassed before the executing Court are substantially reiterated by the parties to the revision. The revision petitioner has to point out the illegalities or irregularities committed by the executing Court in the impugned order. Admittedly, on the consideration as to whether the EP schedule property is assigned land or not, no submissions on merits of the case are put forward. Let me examine the submission

and the evidence available on record and the findings recorded by the executing Court. Briefly stated the objections of revision petitioner are two fold viz., that the EP schedule land is an assigned land and secondly by way of operation of Act 9 of 1977, the sale of assigned land even through process of law is prohibited. On the other hand, the respondent-decree holder contends that the revision petitioner being the purchaser through Ex.P-1, mortgaging the same through Ex.P-2 cannot and could not take an objection of transfer of EP schedule property or creation of a mortgage thereon. The revision petitioner has not placed before the Court the assignment order. The xerox copy of assignment or a certified copy of a xerox copy cannot be treated as primary evidence of assignment in favour of revision petitioner. In view of the rival submission, the consideration of first contention and the finding thereon would substantially deal with and answer the second point as well. The executing Court on this aspect of the matter held as under:

“In the cross examination of PW.1, Exs.R1 to R3 were confronted to him, and he admitted them, they were marked. Ex.R1 is the copy of House Site Allotment Patta issued to Smt.Jeenat Bee, in respect of House No. 41-140-S. Ex.R2 is the Certified Copy of the deposition given by PW.1, as PW.1 in E.P.No.87 of 2010. This Document was marked subject to objection, that the recitals were not confronted to the witness. This Court has perused the said deposition of the witness, and it is found that PW.1 has admitted therein that Ex.B1 is the xerox copy of the patta with regard to D.No.41/40; and that he did not file any document to show that D.No.36/30-10 belongs to judgment debtor. It appears that in view of these admissions, without even confronting the same, Ex.R2 was just simply

shown to the witness. This Court is of the opinion that since the witness is alive, the particular portion, which is relevant in respect of the contentions of the respondent/judgment debtor, has to be confronted to the witness (i.e., PW.1) in the cross examination, and then only, both the deposition and the relevant portion can be marked as exhibits. In the present case, except marking the total evidence of RW1, no attempt was made by the learned counsel for respondent/judgment debtor to confront the recitals therein to PW.1. In such circumstances, this Court is of the opinion that Ex.R2 cannot be taken into consideration; and that the admission of PW.1 therein, is not much helpful to the present contentions of the respondent/judgment debtor, since it is a mere admission, regarding the existence of patta, and nothing else.

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Ex.R1 was marked in the cross examination of PW.1 recorded on 16.07.2014, and it is the xerox copy of the patta issued in favour of Smt.Zeenath Bi in respect of house bearing D.No.41/140-S. Ex.R4 is the certified copy of the patta in RCB.948/94 dated -8.94, issued in the name of Smt.Jeenath Bee, for H.No.41-40-S. As seen from it, it is the certified copy of the Ex.B1 marked in E.P.No.87 of 2010. Ex.R4 was marked subject to objection that the original patta was not filed, and regarding its admissibility. It is clear from the records of E.P.No.87 of 2010, available along with records, it is clear that a xerox copy of patta was confronted to PW1 in his evidence in E.P.No.87 of 2010, and when he admitted it, it was marked as Ex.B1 therein. So, the present copy is the certified copy of the xerox copy of document admitted in E.P.No.87 of 2010. Being certified copy of a xerox copy, Ex.R4 cannot be admitted in evidence. Further, the respondent/judgment debtor did not give any explanation, as to where the original patta of Ex.R4 is, and in whose custody it is. Hence, the objection taken at the time of marking of Ex.R4 is upheld, and this Court concludes that Ex.R4 cannot be admitted in evidence.

It is clear from the document in Ex.P2 that the respondent/judgment debtor and his wife have mortgaged the EP schedule property to the petitioner on 22.02.1997. The petitioner/decreed holder has also admitted that he has filed a suit in O.S.No.1344 of 2005 on the file of the Court of the Second Additional Junior Civil Judge, Kurnool and that it was decreed on 27.02.2006; and that subsequently, he has filed E.P.No.59 of 2014 for recovery of the mortgage decree amount. But, what is the stage of the said E.P.No.59 of 2014 was not at all stated by the PW.1 before the Court, either in his evidence, or suggested to RW.1 in his cross examination. Even in his chief affidavit, PW.1 has reiterated that E.P.No.59 of 2014 is pending. Upon considering the entire circumstances, this Court is of the opinion that since the petitioner/decreed holder himself has filed the E.P.No.59 of 2014 for recovery of mortgage debt, though the said debt will get more priority over the present decree, and as the present petitioner/decreed holder has proceeded to pursue this E.P first, an inference can be drawn that the petitioner/decreed holder is inclined to get the E.P schedule property alienated before any court of law, without insisting of his right as a secured debtor under the proceedings in E.P.No.59 of 2014 in O.S.No.1344 of 2005. Hence, this Court opines that the pendency of E.P.No.59 of 2014 is not a bar to proceed with this E.P.

By virtue of the above discussion, this Court concludes and holds that the E.P schedule property is not an assigned land, and as such, the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 9 of 1977 does not apply to the patta under the original of Ex.R1 which was clearly issued in the name of Zeenath Bi, on payment of market value for the property allotted to her; and that as Ex.1 establishes that the respondent/judgment debtor and his wife purchased the E.P schedule property together, the respondent/judgment debtor will be entitled only for half share in the E.P schedule house property; and that the same can be alienated in Court Auction; and that the contention of the respondent/judgment debtor that the

E.P. schedule property cannot be alienated, is not at all tenable under the eye of law.

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Therefore, this Court concludes and holds that the E.P schedule property is not a Government Property, since it was assigned on payment of market value by Smt.Jeenat Bee; and that it can be alienated in Court auction; and that the petitioner/decreed holder can be permitted to proceed against the E.P schedule property, to realize the E.P amount from the respondent/judgment debtor; and that the respondent/judgment debtor owns only half share in the E.P schedule house property; and that the said half share of the respondent/judgment debtor alone can be brought for sale in Court auction, to realize the E.P amount from the respondent/judgment debtor.”

The decisions relied upon by the petitioner, no doubt, lay down that even through process of law, the assigned land cannot be alienated. Now the point for consideration is - whether the revision petitioner, as matter of fact, could discharge the burden or not on the nature of house plot. The consideration of material available on record shows that a plea as to the maintainability of EP by reference to Act 9 of 1977 is taken. The petitioner relies upon a xerox copy of house site patta in favour of his sister. However, in the same breathe the petitioner admits that through Ex.P-1, the property was purchased and under Ex.P-2, same property was mortgaged. If at all what the petitioner now contends, for these two situations, is true, same objection is applicable to petitioner as well. Be that as it may, the prohibition under the Act is attracted if it is established by evidence that the EP schedule house is constructed on assigned land. This Court, after perusing the

detailed order and also the exhibits, is of the view that the petitioner failed to establish that the EP schedule house is an assigned land. The findings of fact on this aspect do not warrant interference.

Revision fails and is, accordingly, dismissed. There shall be no order as costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

18th April, 2017

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