

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4200 of 2017

ORDER:

This Civil Revision Petition is filed assailing the order dt.19.06.2017 in EA.No.10 of 2017 in E.P.No.32 of 2016 in O.S.No113 of 2014 of the Senior Civil Judge, Puttur, Chittoor District.

2. Petitioner is the Judgment Debtor in the EP. For recovery of money, the respondent filed the above suit. The said suit was decreed and the preliminary decree on the mortgage debt was passed on 23.02.2015 and final decree was passed on 29.02.2016.

3. Respondent filed E.P.No.32 of 2016 for execution of the final decree seeking a sum of Rs.12,11,945/- with costs of Rs.33,044/- by attaching the subject property and for sale of the same by invoking Order 21 Rule 64 and 66 of CPC.

4. Petitioner was set ex parte on 23.11.2016.

5. Thereafter, petitioner filed E.A.No.10 of 2017 invoking Order 21 Rule 106 CPC to set aside the ex-parte order.

6. By order dt.19.06.2017, the Court below dismissed the said EA. It held that the sale notice was returned un-served with endorsement that Judgment Debtor is not residing in the suit address and that substituted service of notice was also

taken up by way of paper publication. It observed that the record shows that the decree on which the present EP is filed is a mortgage decree, and the judgment debtor remained ex parte at the stage of filing of the suit and final decree petition and test warrant was issued to verify the EP schedule property and later sale notice was ordered. It also noted that sale proclamation was ordered and sale was conducted on 25.01.2017 and at that stage, the present petition was filed. It rejected the plea of the petitioner that he could not attend before the Court since one of his blood relatives died in his village and he went to attend funeral ceremony, and observed that there was no contention that petitioner had no knowledge about the EP proceedings.

7. Assailing the same, this Revision is filed.

8. Counsel for petitioner contended that the impugned order is vitiated by error of jurisdiction and the Court below ought to have given him an opportunity to contest the EP.

9. Admittedly, EP was filed on 25.07.2016. Sale warrant was issued in 23.12.2016 returnable by 25.01.2017. Petitioner did not receive notice in the EP and the respondent had made paper publication by way of substituted service of notice. Even though sale notices were issued to the petitioner, he again evaded to receive the same and again paper

publication had to be made on 22.12.2016. The sale was conducted on 25.01.2017 and the application to set aside the ex-parte order dt.23.11.2016 was made on 20.01.2017.

10. The conduct of the petitioner indicates that he has been evading service of notices in the EP; and even if he went to attend the death ceremony of one of his blood relatives, that does not explain his repeated evasion of the notices from the Court below. It is clear that the petitioner's actions have not been bonafide and that the Court below was right in rejecting his plea to set aside the order dt.23.11.2016 in the EP.

11. Therefore, I find no merit in this Civil Revision Petition and it is accordingly dismissed. No costs.

12. Miscellaneous petitions, pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

27th November, 2017.

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