

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

Writ Petition No.35330 of 2016

ORDER: *(per V. Ramasubramanian, J.)*

The petitioner has come up with the above writ petition challenging an auction sale notice.

2. Heard Sri L. Ravichander, learned senior counsel appearing for the petitioner and Sri Srinivas Chitturu, learned counsel appearing for the respondent-Bank.

3. There was virtually a title dispute between the petitioner and the 3rd respondent borrower. The petitioner claims title to the property through two sons of one Jagannath Goud, who was admittedly the original owner of the property. The two sons of Jagannath Goud are said to have been allotted the land of an extent of Ac.2.36 guntas in a final decree passed on 26-03-1980 by the III Senior Civil Judge, City Civil Court, Secunderabad in O.S.No.1103 of 1979.

4. But the mortgagor claims title through the 2nd defendant in the very same suit who was also one of the sons of Jagannath Goud and to whom also was an equal extent of lands was allotted under the very same final decree.

5. The question as to whether the plots of land mortgaged to the bank form part of the larger extent allotted to the 2nd defendant

or allotted to defendants 3 and 4 in the final decree proceedings, becomes a question of importance, which cannot be decided in a writ petition under Article 226 of the Constitution of India. If what the petitioner says is true then the sale in favour of the mortgagor and the very mortgage would be vitiated by fraud and hence, the Civil Court would have jurisdiction to decide the issue.

6. It appears that the auction was conducted on 19-10-2016 and the sale is yet to be confirmed. Since the petitioner has raised a serious suspicion about the title of the mortgagor to the property and also since criminal proceedings are said to have been initiated against the vendor as well as the mortgagor not only on the ground that the property was unlawfully sold but also on the ground that another mortgage had been created in favour of another bank, we are of the considered view that the respondents should not confirm the sale at least for a period of four (4) weeks to enable the petitioner to move the Civil Court. Therefore, the writ petition is disposed of to the following effect:

- 1) for a period of four (4) weeks from the date of receipt of a copy of this order, the respondent-Bank shall not confirm the auction in favour of the successful bidder;
- 2) within the period of four (4) weeks, it will be open to the petitioner to move the appropriate forum for relief and also seeking interim protective orders.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 04-01-2017

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