

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

APPEAL SUIT NO.308 OF 2018

JUDGMENT:-

This Appeal Suit is filed against the order dated.20-10-2017 passed in E.A.No.1 of 2017 in E.P.No.27 of 2013 in O.S.No.827 of 2011 on the file of the Court of I Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. E.A.No.1 of 2017 is a claim petition filed by a third party under Order XXI Rule 58 CPC read with Section 151 CPC praying the court below to release the property bearing Flat No.401, third floor, Municipal No.30-265/20/18/401, Baig Hardev Hill View Residency, Officers Colony, Dr.A.S.Rao Nagar, Malkajgiri Mandal, Ranga Reddy District from the attachment.

3. The claim of the petitioner is based upon his title to the property, which he states that he acquired the property in an 'e-auction' conducted by the Syndicate Bank, Narkhode Branch, under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (also known as the SARFAESI Act). He also states that he was issued sale certificate bearing No.829/2014, dated.19-03-2014.

4. On the other hand, the contention of the respondent-company is that it filed Execution Petition (E.P) for

realization of the sum and that it filed encumbrance certificate which shows that the property does not have any encumbrance what-so-ever and hence the lower court rightly directed the sale of the property. This is the brief factual background of the case.

5. On a perusal of the impugned order, it appears that the court below passed the order only on the basis that encumbrance certificate which is produced does not disclose the registration of the property in the name of the petitioner through document No.829/2014, dated 19-03-2014.

6. After hearing both parties, this court is of the opinion that the court below committed an error. An application under Order XXI Rule 58 CPC is to be treated like a suit and decided like a suit. It is incumbent on the court below to examine the merits and demerits of the case and then only decide the same. The court below has also lost the track of the fact that a registered document carries a sanctity by itself. The sale certificate that the petitioner relies upon is an 'e-auction' conducted by a nationalized bank and the sale certificate was also registered. The learned counsel for the petitioner also submits that registered sale certificate was also filed in the court below. In view of the fact that the court below had the registered document in its records, it should have carried out a thorough enquiry into the

matter instead of summarily deciding the same. Therefore, this court is of the opinion that this is a fit case for remand. Further, the learned counsel for the appellant filed I.A.No.1 of 2018 under order 41, Rule 27 of CPC to receive additional documents. Although these documents could be considered by this court itself, this court is of the opinion that the court below should take the evidence as per the provisions of Order XLI Rule 28 CPC.

Accordingly, the Appeal Suit is allowed. The matter is remanded to the court below for fresh disposal after giving an opportunity to both parties to introduce oral and documentary evidence within the time frame fixed by the court below. The learned counsel for the appellant also submits that the sale of the property scheduled to be held on 03-08-2018 in E.P.No.3 of 2018. Therefore, the said sale is also stayed. The sale shall be conducted after the claim petition in E.A.No.1 of 2017 is decided. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

18-07-2018
TSNR