

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.8978 OF 2018

Between:

Shaik Mohammad Jabir S/o. Shaik Gulam Mahemood,
Aged 26 years, Occ: Business, R/o. 4-18, Chand Baba,
Nandyal, Kurnool District, A.P.

...Petitioner

Vs.

The Andhra Bank, Rep. by its Manager,
Kurnool Zonal Office at Kurnool,
Kurnool District, A.P., and others.

.. Respondents

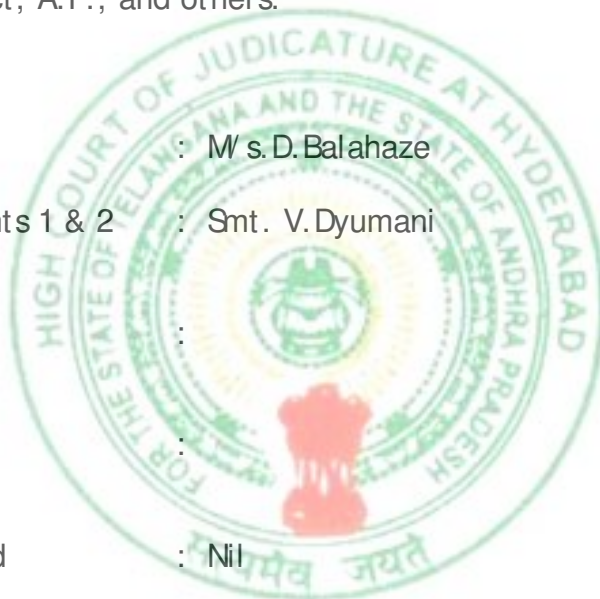
For Petitioner : M/s. D. Balahaze

For Respondents 1 & 2 : Smt. V. Dyumani

Gist :

Head Note :

Cases Referred : Nil



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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ORDER: (per V. Ramasubramanian, J)

Challenging an auction sale notice issued under Rule-9 of the Security Interest (Enforcement) Rules 2002, the petitioner has come up with the above writ petition.

2. Heard Mr.D.Balahaze, learned counsel for the petitioner. Smt.V.Dyumani, learned Standing Counsel takes notice for the respondents.

3. The main grievance of the petitioner is that one of the properties sought to be taken possession of and also brought to sale, was a property gifted by his father to him, way back in the year 2012 by way of Hiba and that it was only thereafter, a mortgage was created by the father in favour of the Bank. Therefore, the claim of the petitioner is that he has become the owner of the property even before a mortgage was created.

4. But, Hiba being either an oral gift or a gift evidenced by an unregistered document, has to be proved only in accordance with the Rules of evidence. Therefore, the facts pleaded by the petitioner may have to be adjudicated only by the Debts Recovery Tribunal and not by this Court in a writ petition under Article 226 of the Constitution of India. There is no reason why the petitioner by passed the alternative remedy of appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Therefore, leaving it open to the petitioner to go before the Debts Recovery Tribunal under Section 17 of Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the writ petition is dismissed.

6. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 22, 2018

Note:

Furnish CC tomorrow.

B/O.

KTL

