

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1957 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.495 of 2011 in O.S.No.68 of 2011 dated 16.09.2017 passed by the Junior Civil Judge, Nandikotkur, Kurnool District, allowing the application filed under Order XI Rule 14 and Section 151 of C.P.C, to cause production of original agreement of sale dated 28.07.1998, which was taken by the petitioner herein/respondent/plaintiff through written document Memo No.89 of 2011 dated 03.08.2011 in O.S.No.59 of 2005.

The respondents herein filed I.A.No.495 of 2011 to cause production of original agreement sale deed dated 28.07.1998, alleging that, the petitioner herein filed O.S.No.68 of 2011 for perpetual injunction and obtained *exparte ad-interim* injunction under Order XXXIX Rules 1 & 2 C.P.C in I.A.No.188 of 2011 and in the said interlocutory application, the petitioner before this Court filed counter contending that she purchased the property prior to sale of the property and entered into agreement of sale to purchase the property, prior to auction of the property and later filed O.S.No.59 of 2005 and obtained decree for specific performance and therefore, transaction is prior to sale of the property. But, the respondents herein/petitioners contention was that, the suit was filed after attachment of the schedule property and it was brought to sale before the Court for realization of decretal amount and the said property was purchased in the Court auction. Therefore, to

decide whether the agreement of sale was prior to attachment or not, agreement is required and requested to issue necessary directions.

The petitioner before this Court filed counter, denying material allegations, *inter alia*, contending that, agreement of sale dated 28.07.1998 is the crucial document to decide the matter on merits because, one K.V. Rama Krishna and his daughter K.V. Sree Devi colluded with each other and filed O.S.No.59 of 2005 and obtained a collusive decree in order to grab the property and after passing of decree in O.S.No.59 of 2005 Sree Devi executed a registered sale deed in favour of the petitioner herein/plaintiff on 30.04.2008 for deciding the real controversy and the respondents herein cannot be compelled by this petitioner to produce the sale agreement document.

The Trial Court upon hearing argument of both counsel, passed the impugned order by allowing the application, issuing a direction to this petitioner to produce original agreement of sale dated 28.07.1988 on 30.04.2008. Aggrieved by the said order, the present civil revision petition is filed under Article 227 of the Constitution of India, mainly contending that, issuing a direction without appreciating the fact in a suit for injunction in pursuance of decree in O.S.No.59 of 2005 is an error apparent on the face of record and the order passed by the Trial Court is not in accordance with law and therefore, filing such application amounts to collection of evidence. When original sale deed is placed on record, issue of direction to cause production of agreement of sale dated

28.07.1988 is unwarranted and requested to set-aside the order passed by the Trial Court.

During hearing, learned counsel for the petitioner while reiterating the grounds urged before the Trial Court and grounds of revision, submitted that, after passing the impugned order, the original agreement was misplaced. Therefore, it is difficult for her to comply with the direction issued by this Court and requested to set-aside the order, whereas, learned counsel for the respondents supported the order passed by the Trial Court in all respects.

It is an undisputed fact that, the property was brought to sale in execution of a decree, obtained by D.Hr and in the auction sale, the respondents became highest bidder in the public count auction of the property which was attached before judgment and similarly, the petitioner also obtained decree in O.S.No.59 of 2005 against Sree Devi. But, the contention of this petitioner is that, the document was taken back from the Court by filing a Memo No.89 of 2011 dated 03.08.2011, which was misplaced subsequently. The story of misplacing the document is invented for the first time during argument and such contention was not urged before the Trial Court or atleast in the grounds of revision. Therefore, the alleged misplacing of the document cannot be accepted.

The reason for allowing I.A.No.495 of 2011 by the Trial Court is that,, the document was taken by the petitioner by filing Memo No.89 of 2011 dated 03.08.2011. Therefore, she is supposed to be in possession of the original agreement of sale which is a crucial document to decide whether purchase was subsequent to the date of attachment of property. If, agreement was obtained subsequent

to attachment of the property, i.e. attachment before judgment under Order XXXVIII Rule 5 C.P.C, or attachment under Order XXI Rule 54 C.P.C, in case the petitioner failed to produce the said document, the Court is bound to draw an adverse inference under Section 114 of the Indian Evidence Act. When the petitioner is contending that the agreement is prior to attachment of immovable property under Order XXXVIII Rule 5 C.P.C or Order XXI Rule 54 C.P.C to decide the crucial aspect of purchase and entering into the agreement of sale, the original agreement is necessary. Therefore, issue of direction by the Trial Court for production of document by exercising power under Order XI Rule 14 C.P.C cannot be faulted. However, it is for the petitioner to produce the document. In case, the original agreement sale is not produced during trial, the Trial Court may draw necessary adverse inference for non-production of the document.

In view of my foregoing discussion, I find no legal infirmity warranting interference of this Court exercising power under Article 227 of the Constitution of India and consequently, the civil revision petition is liable to be dismissed.

In the result, civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.11.2018

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