

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3933 OF 2016

ORDER:

This civil revision petition is filed under Section 115 of C.P.C, challenging the order in E.A.No.125 of 2013 in E.P.No.126 of 2012 in O.S.No.245 of 1992 dated 14.06.2016 passed by the Principal Senior Civil Judge, Narasaraopet, Guntur District, dismissing an application filed by respondents 1 & 2/auction purchasers under Section 151 C.P.C, for delivery of the property, being a purchaser in an auction held by auction purchaser in terms of Sections 3 & 4 of Partition Act. But, the final decree petition was dismissed for non-prosecution before the Trial Court.

Though, sale was confirmed, possession of the property was not delivered, since the main petition for passing a final decree was dismissed. But, the Court below dismissed the petition on the ground that, since main petition for passing a final decree is dismissed, the petition for delivery of property is not maintainable, though he became a highest bidder and bid was knocked down his favour and confirmed the sale.

Today, it is brought to the notice of this Court that I.A.No.320 of 2013 is pending before the court to restore the interlocutory application i.e. final decree petition. But, finally application for delivery of possession of the property by the purchaser is an illegality, according to the learned counsel for the petitioners.

But, this was not accepted by the Executing Court and allowed the petition filed by the respondents. Aggrieved by the order and judgment in E.A.No.125 of 2013 in E.P.No.126 of 2012 in O.S.No.245 of 1992, the present civil revision petition is filed, questioning the same on the ground that, when final decree was not passed, allotting shares to the parties to the suit, in a suit for partition, the auction purchaser cannot proceed to execute the order for delivery of the possession, though sale was confirmed.

But, it is difficult at this stage to decide the question on execution side, since no decree is passed in his favour or in favour of the plaintiffs in final decree. Therefore, filing a petition for delivery of possession appears to be an illegality. Hence, the order passed by the Trial Court is hereby set-aside, while remanding in E.A.No.125 of 2013 in E.P.No.126 of 2012 in O.S.No.245 of 1992 to the Trial Court and the Trial Court is directed to dispose of the same, in accordance with law, as expeditiously as possible, in any event not later than two months from today.

In the result, the civil revision petition is disposed of.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:05.11.2018

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