HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.5895 OF 2010

ORDER:

The revision is at the instance of 3rd party- auction purchaser. The revision petitioner challenges the order dated 28.09.2004 in E.A. No.483 of 2001 in E.P. No.93 of 1999 in O.S. No.39 of 1985 as confirmed by judgment dated 05.01.2007 in CMA No.2 of 2006.

The 1st respondent since deceased, is represented by his L.Rs in this revision petition. The 1st respondent filed E.A.No.483 of 2001 under Section 47 read with Order 21 Rule 90 of CPC to set aside the sale conducted on 23.07.2001.

The principal objection of 1st respondent against sale conducted on 23.07.2001 was that E.P. No.93 of 1999 was filed to recover a sum of Rs.20,587/- and in the process of realizing the decretal amount, E.P. schedule property measuring Acs.2-32 cents in R.S.No.45/1 of Gopavaram Village was sold for a sum of Rs.2,81,000/- and the E.P. proceedings up to the stage of auction and also the confirmation of auction are hit by several irregularities and illegalities including the disproportionate selling of agricultural land. On these objections, the executing Court has held as follows:

> "Further the Advocate for the petitioner relied upon the observation in (1) SATYANARAIN BAJORIA AND ANOTHER VS. RAMANARAIN TIBREWAL AND ANOTEHR: Reported at A.I.R. 1994 Supreme Court, page 1583: (2) SEETHAMAL VS. SENTHILFINANCE AND ANOTEHR; Reported at A.I.R.1996 Supreme Court, page 1551; (3) S.S.DAYANANDA VS. K.S.NAGESH RAO AND OTHERS; Reported (1997) 4 Supreme Court Cases, page 451; which are all disclosing that all similar

grounds taken by the petitioner, the Order setting aside the sale was upheld by the Lordships of Supreme Court and A.P. High Court.

Upon over all consideration of fact and circumstances of the case the fact that when the E.P. amount itself is Rs.20,587/- and by the date of sale including the costs and subsequent interest the amount recoverable may come to Rs.40,000/- the sale of the entire extent of E.P. schedule land for a sum of Rs.2,81,000/- instead of selling a portion of the E.P. schedule property which may satisfy the above said E.P. warrant Amount is nothing but excessive act and irregularity apparent in the proceedings of the sale.

In the light of the observations of their Lordships of Supreme Court in AMBATI NARASAYYA VS.M.SUBBARAO AND ANOTEHR Reported at A.I.R.1990 Supreme Court, Page 119, in view of such irregularity alone is the sale is liable to be set aside and the petitioner established substantial grounds to set aside the sale. Further to show the bonafides of the petitioner he has also deposited Rs.46,000/- towards the amount due under the decree sought for execution and the incidental charges to be paid by him for setting aside the sale. Therefore by setting aside the sale that the Decree-holder nor the Auction purchaser will not suffer any loss.

In the above circumstances of the case in the result, the petition is allowed setting aside the sale held on 23-7-2001 in respect of the E.P. schedule property with an observation that the D.Hr. is at liberty to be withdraw the decree debt amount and the Auction Purchaser is at liberty to withdraw the amounts payable to him from and out of the amounts deposited by the J.Dr. and the amount available in the account of the Execution Petition."

The D.Hr accepted the amount tendered by 1st respondent and did not contest the order in E.A. No.483 of 2001. The revision petitioner filed CMA No.2 of 2006. The learned District Judge through the order dated 05.01.2007 again examined the irregularities occasioned in conducting the sale and dismissed the CMA. Hence the CRP.

The basic details are not in dispute namely, that the E.P. amount is Rs.20,587/-. The D.Hr ought to have sold the property proportionate to the amount recoverable in the instant E.P. In the case on hand, the property worth 14 times more than what is beyond payable to the D.Hr has been sold in the Court auction. The executing Court and the appellate Court, in the considered view of this Court have rightly exercised their jurisdiction and set aside the sale. This revision at the instance of auction purchaser does not warrant re-examining the issue on hand. Revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 05.09.2018
Stp