

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.25067 OF 2017

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

Snigdha Plastic Industries, Kukatpally, Hyderabad, a registered partnership firm, and V.Manjula, one of its partners, are the petitioners in this case. They are aggrieved by and assail the dismissal of their Appeal No.88 of 2016 by the Debts Recovery Appellate Tribunal, Kolkata (*hereinafter*, 'the Appellate Tribunal'), *vide* order dated 12.07.2017, and seek a consequential direction to set aside the sale notice dated 07.07.2012 and the registered sale certificate bearing Document No.11361/2012 dated 27.09.2012 issued by Canara Bank, Hyderabad (*hereinafter*, 'the bank'), in favour of the auction purchaser, Virinchi Technologies Limited, Secunderabad, the fourth respondent herein.

Ree Polyplast, the second respondent-partnership firm, availed an open cash credit facility of Rs.400.00 lakh and a term loan of Rs.210.00 lakh from the bank in February, 2009. J.Aruna Kumari, the third respondent, is a partner of the second respondent firm. She mortgaged an extent of land admeasuring Ac.1.00 gts. situated in Sy.No.15 (Part) of Suraram Village, Quthbullapur Mandal, Ranga Reddy District, as security for the loan facilities availed by the second respondent firm, by deposit of title deeds. The second respondent firm's loan account was thereafter classified as a non-performing asset on 31.10.2011 and the bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), culminating in the sale notice dated 07.07.2012 published under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'),

proposing to put the subject land to sale. The sale was held on 16.08.2012. Aggrieved by the sale notice, the petitioners herein filed S.A.No.370 of 2012 before the Debts Recovery Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'). Their amended prayer therein was to set aside all the measures taken by the bank in relation to the subject land, including the sale notice dated 07.07.2012, the sale held on 16.08.2012 and the registered sale certificate dated 27.09.2012. Be it noted that the sale held on 16.08.2012 was the second attempt by the bank to sell the subject land. The earlier sale notice dated 12.04.2012 proposing to hold an auction sale on 18.05.2012 came to naught for want of bidders. There is no indication of the petitioners having taken any steps against the said sale notice. In any event, by judgment dated 22.01.2016, the Tribunal dismissed S.A.No.370 of 2012. Aggrieved by the said dismissal, the petitioners filed Appeal No.88 of 2016 before the Appellate Tribunal. However, by the order dated 12.07.2017, the Appellate Tribunal dismissed the said appeal. Hence, this writ petition.

Heard Sri A.Sudershan Reddy, learned senior counsel appearing for Sri G.Madhusudhan Reddy, learned counsel for the petitioners; Sri Deepak Bhattacharjee, learned senior counsel representing Sri Dishit Bhattacharjee, learned counsel for the bank; and Sri R.Raghunandan, learned senior counsel appearing for Sri A.Sanjay Kishore, learned counsel on caveat for the fourth respondent-auction purchaser. Despite substituted service of notice being effected by way of publication thereof in Indian Express English newspaper and Andhra Jyothi Telugu newspaper, both dated 14.02.2018, the second respondent firm and J.Aruna Kumari, the third respondent, did not choose to enter appearance before this Court.

The firm, Snigdha Plastic Industries, was originally constituted under partnership deed dated 25.11.2006 to carry on business in the manufacture

of plastic moulded furniture, house hold articles, etc. At that point of time, it had four partners, viz., J.Aruna Kumari, the third respondent, Varala Swarupa, Varala Manjula, the second petitioner, and Varala Indra Bai. Their shares in the firm were 50%, 25%, 12.5% and 12.5% respectively. The firm purchased an extent of land admeasuring Ac.2.00 gts. in Sy.No.15 (Part) of Suraram Village, Quthbullapur Mandal, Ranga Reddy District, under registered sale deed bearing Document No.27797/2006 dated 01.12.2006. It then constructed a building in the said land, comprising ground and first floors, with a plinth area of 46,590 square feet.

While so, registered partition deed bearing Document No.1181/2008 dated 11.09.2008 was executed by and amongst the four partners of the firm recording that they had mutually agreed and decided to divide the extent of Ac.2.00 gts. amongst themselves to avoid any future misunderstandings, differences and in order to develop or otherwise use/dispose of their respective properties as required by each of them at any later date. The document recorded that J.Aruna Kumari, the first party thereto, was allotted an extent of Ac.1.00 gts. in Sy.No.15 (Part) of Suraram Village, Quthbullapur Mandal, Ranga Reddy District, while Varala Swarupa, Varala Manjula and Varala Indra Bai were allotted Ac.0.20 gts., Ac.0.10 gts., and Ac.0.10 gts. respectively out of the remaining Ac.1.00 gts. The document also recorded that all the parties were kept in possession of their respective shares with all rights, title, and interest. The schedules and registration plan appended to the partition deed set out in detail the individual shares out of the total extent of Ac.2.00 gts. allotted to each of the four partners in detail along with boundaries.

Thereafter, deed of reconstitution of partnership dated 23.09.2008 was executed showing J.Aruna Kumari along with her daughter, J.Snigdha,

and Vanala (*sic*. Varala) Manjula as partners. Surprisingly, the bank produced another deed of reconstitution of partnership dated 23.09.2008 which was executed only by and between J.Aruna Kumari and J.Snigdha as partners. Varala Manjula does not find mention as a partner in this deed. Significantly, both the documents were engrossed with the same identical stamp on the first page, which is highly irregular and creates any amount of doubt as to these documents. In any event, neither of these documents speaks of the extent of Ac.1.00 gts., which was allotted to J.Aruna Kumari under the partition deed, being the stock/asset of the reconstituted firm. On the other hand, Clause 5(a) of both the deeds records that the capital of the firm shall be the balance in the account of the partners and what the new partner agreed to bring in as her share to discharge the outgoing partners' credit balances. Clause 5(b) recorded that any additional capital, as may be required for the purpose of the partnership, should be contributed by the partners in such manner and in such proportion as mutually agreed upon from time to time.

However, surprisingly, on 03.01.2009, a registered lease deed bearing Document No.1015/2009 was executed by Snigdha Plastic Industries represented by J.Aruna Kumari, its Managing Partner, whereby the subject land was leased out to the second respondent firm for a period of 11 years.

The status of the two reconstitution deeds dated 23.09.2008 being questionable in itself, Form-A issued by the Registrar of Firms, Ranga Reddy District, in terms of Section 59 of the Indian Partnership Act, 1932 (*for brevity*, 'the Act of 1932') makes for an interesting reading. Therein, the date of registration of the firm, Snigdha Plastic Industries, is shown as 10.07.2009 with three partners, viz., J.Aruna Kumari, J.Snigdha, and V.Manjula. Significantly, the date of joining of all three partners is shown as 09.07.2009.

Deed of partnership dated 09.07.2009 is produced and it reads to the effect that J.Aruna Kumari, J.Snigdha and V.Manjula agreed to carry on the business of manufacture of plastic moulded furniture, house hold articles, etc., under the name of Snigdha Plastic Industries and reduced the terms and conditions of their partnership into writing thereunder. In effect, this deed shows that a new partnership firm was constituted with effect from 09.07.2009. No mention is made in this document of the earlier partnership firm bearing the same name and it does not purport to be a reconstitution of the said firm. This document also does not contain any recital to the effect that J.Aruna Kumari brought in the extent of Ac.1.00 gts. in Sy.No.15 (Part) of Suraram Village, Quthbullapur Mandal, Ranga Reddy District, into the stock of the new partnership firm.

These being the facts borne out by the record, Sri A.Sudershan Reddy, learned senior counsel, would contend that the extent of Ac.1.00 gts. which fell to the share of J.Aruna Kumari under the partition deed dated 11.09.2008 belonged to the first petitioner firm and therefore, she had no right to create a security interest over it for the loan facilities availed by the second respondent firm, wherein she was also a partner. Learned senior counsel would rely upon the registered lease deed whereunder the first petitioner firm, represented by J.Aruna Kumari as its Managing Partner, leased out the subject land to the second respondent firm for a period of 11 years commencing from 01.01.2009 and contend that this document puts it beyond the pale of doubt that the land in question did not exclusively belong to J.Aruna Kumari and therefore, the creation of a mortgage by her over the same would not bind the first petitioner firm. He would state that this was the basis for the challenge laid by the petitioners in S.A.No.370 of 2012 before the Tribunal. He would assert that the Tribunal erred in concluding

that J.Aruna Kumari was the exclusive owner of the subject land with absolute rights, title and interest and therefore, the mortgage created by her to secure the loan facilities availed by the second respondent firm could not be said to be invalid. He would further state that the Appellate Tribunal compounded this error on the part of the Tribunal by doubting whether V.Manjula was a partner of the firm in the light of the conflicting deeds of reconstitution dated 23.09.2008. He would assert that the Appellate Tribunal was not right in affirming the finding of the Tribunal that J.Aruna Kumari was the exclusive owner of the subject land and had a right to create an equitable mortgage over the same. He would therefore assert that necessary inferences should be drawn from the documents on record and more particularly, the registered lease deed dated 03.01.2009 which clearly demonstrated that the subject land was the property of the first petitioner firm and not the exclusive property of J.Aruna Kumari.

Contesting the aforestated arguments, Sri Deepak Bhattacharjee, learned senior counsel, would highlight the discrepancies brought out by the documents referred to *supra*. He would place reliance on the letter dated 21.02.2009 executed by J.Aruna Kumari, evidencing deposit of the title deeds, wherein she acknowledged that she had deposited on 20.02.2009 the documents set out in Schedule 'A' annexed thereto with the Ameerpet Branch of the bank with the intent to create security by way of an equitable mortgage by deposit of title deeds in relation to the loan facilities availed by the second respondent firm. Learned senior counsel would also point out that the petitioners never raised any protest throughout the various stages of the proceedings initiated under the SARFAESI Act, including issuance of the demand notice, possession notice and the notice under Rule 8(6) of the Rules of 2002. He would further inform this Court that O.A.No.363 of 2012

was filed by the bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for recovery of a sum of Rs.4,93,47,398.55 ps. in respect of the open cash credit facility and Rs.1,86,67,470.25 ps. in relation to the term loan facility, with further interest from the year 2012. According to him, the total amount due as on date would be in excess of Rs.10.00 crores.

Schedule 'A' appended to this letter details 20 documents in all which were deposited by her with the bank, including the original registered sale deed dated 01.12.1996, the original registered partition deed dated 11.09.2008 and the original lease deed dated 03.01.2009. Schedule 'B' bears out that the extent of Ac.1.00 gts. in Sy.No.15 (Part) of Suraram Village was mortgaged in favour of the bank by deposit of title deeds.

Sri R.Raghunandan, learned senior counsel, would point out that the fourth respondent-auction purchaser participated in the auction sale of the subject land held on 16.08.2012 and emerged the highest bidder at Rs.4,50,00,000/-. The sale certificate was issued by the bank on 25.09.2012 in its favour and was registered thereafter on 27.09.2012. He would further point out that possession of the subject land was handed over to the auction purchaser after completion of formalities. Learned senior counsel would assert that the profusion of partnership/reconstitution deeds executed by and amongst the parties clearly demonstrated their lack of *bonafides* and their premeditated efforts to commit fraud upon the bank and consequently, the fourth respondent-auction purchaser, by seeking to nullify the proceedings initiated under the SARFAESI Act.

At this stage, it would be appropriate for this Court to note certain irrefutable facts. Firstly, the firm, Snigdha Plastic Industries, was initially constituted under deed of partnership dated 25.11.2006 with four partners,

J.Aruna Kumari, Varala Swarupa, Varala Manjula and Varala Indra Bai. This firm purchased an extent of Ac.2.00 gts. in Sy.No.15 (Part) of Suraram Village under registered sale deed dated 01.12.2006. However, under the registered partition deed dated 11.09.2008, the four partners decided to partition amongst themselves the land which was purchased by the firm. The document bears out the shares which were allotted to each of them and stipulates that such shares were to be enjoyed exclusively by each of them. Clause 7 of this partition deed is relevant and it reads as under:

‘7. That henceforth the parties hereto shall become absolute and exclusive owners of their respective portions as allotted above and shall enjoy their respective properties exclusively as absolute owners and they can alienate their respective portions and none of them shall have any right, claim or interest of whatsoever nature over the property fallen to the share of the other.’

In so far as the share of J.Aruna Kumari, the first party therein is concerned, the partition deed records as under:

‘(a) Share of property allotted to the FIRST PARTY, i.e. Smt. JONNALA ARUNA KUMARI:- with Firm name(ie. M/s. SNI GDHA PLASTIC INDUSTRIES) and

All that Part and Parcel of Agricultural land in Sy. No. 15/ (Part), to extent of Ac. 1-00 Gts, Situated at Village: Suraram, Under GHMC Circle and Mandal & Regn. Sub-Dist: Quthbullapur, Dist & Regn. Dist: Ranga Reddy, more clearly described as SCHEDULE-A to this Deed.’

Schedule-A to the partition deed reads as under:

**‘SCHEDULE-A PROPERTY ALLOTTED
TO FIRST PARTY, i.e. M/ s. SNI GDHA PLASTIC INDUSTRIES
Rep.By Smt. JONNALA ARUNA KUMARI**

All that Part and Parcel of Agricultural land in Sy. No. 15/ (Part), to extent of Ac. 1-00 Gts, Situated at Village: Suraram, under GHMC Circle and Mandal & Regn Sub-Dist: Quthbullapur, Dist & Regn. Dist: Ranga Reddy and bounded as follows:-

NORTH : 40’ (Feet) Wide Road;
SOUTH : Agricultural Land in Sy. No. 15/Part;
EAST : 40 Feet Road From Sy. No.15;
WEST : Agricultural Land in Part of Sy. No. 15 being allotted to Smt. V. Swarupa;

More fully delineated in “RED” colour in the Plan annexed.

Value of the Property Rs. 1,45,20,000/ -’

In effect, the firm that was constituted under the partnership deed dated 25.11.2006 did not stand dissolved by the partition deed dated 11.09.2008 as there was no mention of dissolution of the firm therein. All that the partition deed accomplished was the division of the land purchased by the firm amongst its individual partners. However, the later reconstitution deeds dated 23.09.2008 did bring to an end the partnership firm as it existed. As pointed out *supra*, there are two such documents bearing the same date and with the same stamp engrossed thereon. Both the documents were signed by J.Aruna Kumari, V.Swarupa, V.Manjula, V.Indra Bai and J.Snigdha. In one, the reconstituted firm comprised J.Aruna Kumari, J.Snigdha and V.Manjula, while the other spoke of only two partners, J.Aruna Kumari and J.Snigdha. The document which names J.Aruna Kumari, J.Snigdha and V.Manjula as the partners of the reconstituted firm records that V.Swarupa and V.Indra Bai, being the partners of the earlier firm, were desirous of retiring from the firm due to personal reasons with effect from 11.09.2008 and that J.Snigdha expressed desire to join the firm and accordingly, the reconstitution was effected. However, the other reconstitution deed which names only two partners, viz., J.Aruna Kumari and J.Snigdha, records that V.Swarupa, V.Manjula and V.Indra Bai, the erstwhile partners of the firm, desired to retire from the firm due to personal reasons with effect from 11.09.2008 and that J.Snigdha expressed desire to join the firm and accordingly, reconstitution was effected. Both the documents were signed by all the parties concerned. It is not clear as to which of these two documents was intended to be acted upon. In any event, there is no evidence forthcoming that either of these documents was actually given effect to. It may be noted that Section 63 of the Act of 1932 deals with

changes in or dissolution of a registered firm and, to the extent relevant, it reads as under:

'63. Recording of changes in and dissolution of a firm.—

(1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

(2) ...'

Further, the Andhra Pradesh Partnership (Registration of Firms) Rules, 1957, were framed in exercise of power under Section 71(2)(b) of the Act of 1932 and Rule 4(2) of the said Rules provided that every statement, intimation or notice relating to a firm, under Sections 60, 61, 62, 63(1) or 63(2) of the Act of 1932, should be sent or given to the Registrar together with the prescribed fee within 15 days from the date of occurrence of the event referred to in such statement, intimation or notice. The validity of this Rule fell for consideration before a Division Bench of this Court in RAJASTHAN TRADING CO. V/s. THE REGISTRAR OF FIRMS¹. The Bench struck down the said Rule opining that neither Section 63(1) nor Section 71(2) of the Act of 1932 empowered the State Government to make rules prescribing any time-limit for the submission of notice or intimation under Section 63(1). The Bench also noted that in Section 63(1) itself, permissive words were used by the Legislature to the effect that a person 'may' send intimation to the Registrar about the change in the constitution of the firm and it was therefore clear that the requirement of giving intimation under Section 63(1) is not mandatory. The Bench opined that as and when

¹ AIR 1975 AP 232 : 1974(1) APLJ 200

such intimation is given, the Registrar was bound to give effect in his records to the reconstitution brought to his notice.

However, the case on hand stands on a different footing. The so-called reconstitution effected on 23.09.2008, be it under one or the other of the reconstitution deeds of the said date available on record, was never given effect to as is clear from the fact that a new firm was independently constituted on 09.07.2009 under a fresh deed of partnership and the same was registered on 10.07.2009 with the Registrar of Firms, Ranga Reddy District, with serial No.1219/2009. Therefore, though the failure to bring the so-called reconstitution deed dated 23.09.2008 to the notice of the Registrar of Firms, Ranga Reddy District, may not be fatal in itself, the facts obtaining thereafter clearly negate the petitioners' claim of the erstwhile firm continuing in existence. In so far Section 63 of the Act of 1932 and the Registrar of Firms were concerned, a new partnership firm was registered on 10.07.2009 pursuant to the deed of partnership dated 09.07.2009, wherein J.Aruna Kumari, J.Snigdha and Vanala (*sic*. Varala) Manjula constituted a new firm by name Snigdha Plastic Industries. There is no recital in this document to the effect that this firm was a continuum of the earlier firm of the same name. There is also no recital of the subject land being part of the firm's assets. In effect, the erstwhile firm which was constituted in the year 2006 and sought to be reconstituted on 23.09.2008 ceased to exist without any formal dissolution or settlement of accounts. A new partnership firm was constituted on 09.07.2009 and the same was registered with the Registrar of Firms, Ranga Reddy District, on 10.07.2009.

Significantly, long before the constitution of this new firm, J.Aruna Kumari created an equitable mortgage in relation to the subject land under the letter dated 21.02.2009. No doubt, registered lease deed dated

03.01.2009 was executed by the firm, Snigdha Plastic Industries, in favour of the second respondent firm. However, it may be noted that the said registered lease deed was executed by the firm represented by its Managing Partner, J.Aruna Kumari, but there is no indication as to who were the other partners thereof. In the light of the conflicting reconstitution deeds dated 23.09.2008 showing different partners and in the absence of any evidence that either of these reconstitution deeds was actually acted upon, this Court cannot draw a conclusion that there was a firm existing at all on 03.01.2009, when the registered lease deed was executed. Be it noted that in one of the reconstitution deeds dated 23.09.2008, Varala Swarupa, Varala Manjula and Varala Indra Bai expressed their desire to retire from the firm with effect from 11.09.2008 and if that deed had been acted upon, no firm could remain in existence after the said date with only one partner, viz., J.Aruna Kumari, till its purported reconstitution on 23.09.2008. As no material has been placed before this Court that the said firm actually stood reconstituted either with J.Aruna Kumari, J.Snigdha and V.Manjula or with J.Aruna Kumari and J.Snigdha, no inference can be drawn to the effect that the said firm continued in existence after that date. To compound matters further, a new partnership firm was separately constituted on 09.07.2009 and registered on 10.07.2009. In such circumstances, it is not for this Court to fill in the blanks or draw any inference by reading between the lines, when there is no cogent picture emerging as to what actually transpired and whether what did transpire carried any value in the eye of law. When the very existence of the erstwhile partnership firm after 11.09.2008 is in question, no value whatsoever can be attached to the registered lease deed dated 03.01.2009 purportedly executed in the name of the said firm by J.Aruna Kumari.

It may also be noticed that the lack of clarity on the part of the erstwhile firm and its partners as to its reconstitution extended to the partition deed dated 11.09.2008. Partition of the extent of land admeasuring Ac.2.00 gts. bought by the firm was effected thereunder amongst the first, second, third and fourth parties thereto. The first party therein is shown as J.Aruna Kumari in her individual capacity. However, when it came to the allotment of shares to the parties, the share allotted to the first party, i.e., J.Aruna Kumari, is followed by the sentence: 'with firm name (i.e., M/s. Snigdha Plastic Industries)'. Schedule-A compounds the confusion further by stating to the effect that the property thereunder was allotted to the first party, i.e., M/s. Snigdha Plastic Industries represented by J.Aruna Kumari. However, when it came to the registered plan, the first party is shown as J.Aruna Kumari only and the sketch thereunder shows the extent of Ac.1.00 gts. in the name of J.Aruna Kumari alone. No mention is made of the firm's name. Significantly, Snigdha Plastic Industries, the firm, was not even a party to the partition deed. Further, as neither of the two reconstitution deeds dated 23.09.2008 mentioned the subject land of Ac.1.00 gts., the only possible inference that can be drawn is that this land was not treated as an asset of the firm. Had it been the intention, in terms of the partition deed, to treat this land as the firm's property, the reconstitution deeds dated 23.09.2008 would not have been silent on that aspect. However, both the documents speak only of the existing and incoming capital under Clause 5(a) but are mute about the subject land. Even the later deed of partnership dated 09.07.2009 does not speak of the subject land. In effect, the only conclusion that can be drawn is that the subject land was intended to be treated as the individual and exclusive property of J.Aruna Kumari herself.

In ADDANKI NARAYANAPPA V/ s. BHASKARA KRISHNAPPA², the Supreme Court observed that the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital, money or even property including immovable property, and once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in and it would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture. The Supreme Court further observed that the person who brought it in would not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. The same principle was reiterated thereafter in SUNIL SIDDHARTHBAI V/ s. COMMISSIONER OF INCOME TAX, AHMEDABAD, GUJARAT³ and PURUSHOTTAM V/ s. SHIVRAJ FINE ARTS LITHO WORKS⁴.

It may also be noted that Section 14 of the Act of 1932 stipulates that subject to contract between the partners, the property of the firm would include all property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm.

Dealing with the aforesaid provision in ARM GROUP ENTERPRISES LTD. V/ s. WALDORF RESTAURANT⁵, the Supreme Court observed that in the absence of an agreement to the contrary, property exclusively belonging to a person would not become the property of the partnership upon his entering into the said partnership with others, merely because it is used for the business of the said partnership. It was further observed that such property would become the property of the partnership

² (1966) 3 SCR 400 : AIR 1966 SC 1300

³ (1985) 4 SCC 519

⁴ (2007) 15 SCC 58

⁵ (2003) 6 SCC 423

only if there is an agreement, express or implied, that the property was, under the agreement of the partnership, to be treated as its property.

In ARJUN KANOJI TANKAR V/ s. SANTARAM KANOJI TANKAR⁶, the Supreme Court observed that whenever there is a partnership and the assets which originally belonged to one of the partners are used for the purposes of the partnership, they cannot be presumed to have become partnership assets. Similar was the view expressed by the Supreme Court in SHASHI KAPILA V/ s. R.P.ASHWIN⁷, wherein it was observed that in spite of the unity between the partners of a firm, every partner can have his own separate existence from the partnership and any right which a partner has over any property, other than the partnership property, would remain as his individual asset. It was further observed that the mere fact that the particular person has chosen to include himself as a partner of a firm will not result in incorporation of all his individual properties as the assets of the partnership firm.

This being the legal position, unless there was a specific act on the part of J.Aruna Kumari demonstrating her intention to bring in the subject land into the stock of the firm, it would not cease to be her individual property. However, as already pointed out *supra*, the very continuance of the partnership firm after 11.09.2008 is shrouded in doubt and a new firm was constituted only on 09.07.2009. The lease deed dated 03.01.2009 executed in the name of the firm by J.Aruna Kumari cannot therefore be treated as an act on her part which would amount to her surrendering her individual and exclusive rights in the subject land to make it part of the firm's property, as no firm is shown to be in existence on that date.

⁶ 1969 (3) SCC 555

⁷ (2002) 1 SCC 583

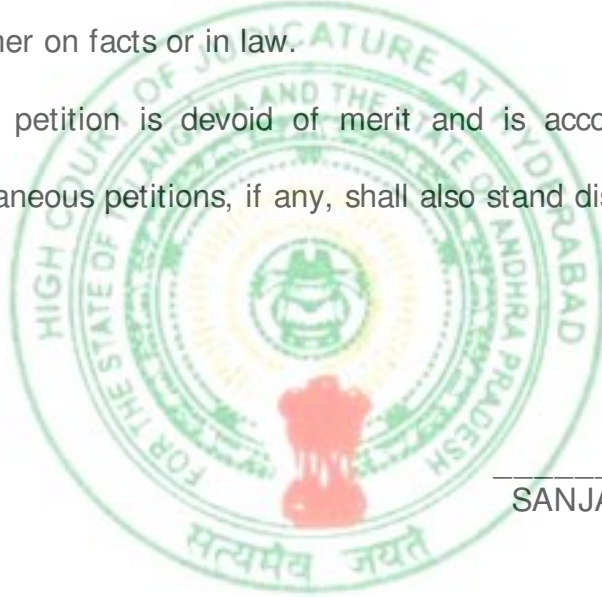
Reliance placed by Sri A.Sudershan Reddy, learned senior counsel, on case law in support of his contention that the registered lease deed dated 03.01.2009, which was also deposited with the bank by J.Aruna Kumari, was sufficient notice to it of the status of the subject land, is therefore of no consequence as this Court is of the opinion that even if the bank had notice of the said registered lease, the same was of no legal effect in the light of the discussion hereinabove.

Further, and most significantly, there is no explanation forthcoming as to why two reconstitution deeds dated 23.09.2008 were drawn up and engrossed with the same stamp. This highly irregular act reflects adversely on the *bonafides* underlying the so-called reconstitution of the firm on that day. As pointed out by the Appellate Tribunal, it appears that all the partners of Snigdha Plastic Industries, former and present, and of Ree Polyplast are either related or closely associated with each other and the present story has been concocted to defeat the interest of the bank and in consequence, the fourth respondent-auction purchaser.

To sum up, this Court is of the opinion that there could be two possible versions. One is that J.Aruna Kumari became the exclusive owner of the subject land under the partition deed dated 11.09.2008 and had absolute rights over the subject land, entitling her to create an equitable mortgage over the same. In this regard, execution of the registered lease deed dated 03.01.2009 would be of no significance as there is no evidence of the existence of a partnership firm on that date for the said act of execution to be treated as one demonstrating the intention of J.Aruna Kumari to treat her own exclusive property as that of the partnership firm. The other possible version is that the subject land was allotted to Snigdha Plastic Industries, the firm constituted in the year 2006. But as there is no evidence of the said firm

continuing in existence after 11.09.2008, given the conflicting reconstitution deeds dated 23.09.2008 neither of which are proved to have been acted upon, there was no partnership firm in existence at all as on 03.01.2009 for J.Aruna Kumari to execute a registered lease deed in the purported capacity of being its Managing Partner. In either event, the said lease deed has no legal consequence and therefore, creation of the equitable mortgage by J.Aruna Kumari on 21.02.2009 was lawful and valid. Be it prompted by sheer ignorance of law or concerted subterfuge and devious forethought, the petitioners' version and claim lack merit. The orders passed by the Tribunal and the Appellate Tribunal holding to this effect therefore do not brook interference either on facts or in law.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

T.AMARNATH GOUD, J

28th AUGUST, 2018

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