

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CIVIL REVISION PETITION NO.5310 OF 2011

**ORDER:**

This revision is filed under Section 115 of the Code of Civil Procedure (CPC) questioning the order dated 18.02.2009 passed by the Principle Junior Civil Judge, Narsapur in E.A.No.187 of 2006 in E.A.No.62 of 2006 in E.P.No.147 of 2003 in O.S.No.169 of 1990 dismissing the application filed by the petitioner herein, under Section 47 read with Section 151 CPC with a prayer not to record the delivery of item No.2 of the E.P. Schedule property pending disposal of E.A.No.62 of 2006.

The petitioner filed the petition alleging that the first respondent filed the suit against the petitioner and obtained decree and filed execution proceedings for realisation of the decretal amount by sale of E.P. Schedule property. Accordingly, the property was sold in public auction in which the second respondent became highest bidder. While conducting the auction of E.P. Schedule property, the D.Hr.-first respondent played fraud and got conducted the auction. The first respondent has not furnished the value of the property and the J.Dr. value is also not mentioned in the sale papers or proclamation but the property was sold by inducting the second respondent, who is a close associate and well-wisher of the Executive Officer of the first respondent-Gram Panchayat.

Item No.2 of the schedule property need not be brought to sale for recovery of decretal debt of Rs.35,000/- and lesser extent of item can be sold for recovery of the debt. There are also no genuine bidders participated in the auction and only the person

who stood as surety on behalf of the Panchayat Executive Officer, participated in the sale and became highest bidder and thus, there are illegalities in the sale and D.Hr. played fraud in bringing the property for sale.

The trial Court, upon hearing the arguments, dismissed the petition holding that no irregularities were brought to the notice of the Court and that the petition is not maintainable and the provision of law quoted in the petition is wrong i.e. Sections 47 and 151 CPC. Aggrieved by the said order, the present revision is filed under Section 115 CPC questioning the propriety and legality of the order on various grounds.

During hearing, the counsel for the petitioner mainly contended that dismissal of the petition on the ground of misquoting or wrong quoting of provision of law is not a ground to dismiss the petition, if the petitioner is otherwise entitled to claim relief in the petition and the Court below did not consider various irregularities committed in the auction and fraud played by the D.Hr. by sale of the property in the public auction and committed an error.

The counsel for the respondent argued in support of the order passed by the Court below while requesting this Court to dismiss the revision since the scope of revision under Section 115 CPC is limited.

The present petition is filed under Section 115 CPC which deals with the power of the Court to revise the orders passed by the Courts under the control of the High Court. Section 115 CPC conferred power on the High Court to call for the records of any case which has been decided by any Court subordinate to High

Court and in which no appeal lies thereto, and if such subordinate Court appears to have exercised jurisdiction not vested in it by law, or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity subject to proviso thereto, the High Court shall not under the section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. Thus, this Court can exercise its power of revision only on the circumstances enumerated under Section 115 CPC.

In the present case, the main ground for dismissal of the application filed under Section 47 read with Section 151 CPC is wrong quoting of provision of law but wrong quoting of provision of law in the petition or misquoting of provision of law is not a ground for dismissal if the petitioner is otherwise entitled to claim the relief. The Apex Court in the judgment reported in **Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs. and Ors.**,<sup>1</sup> held that wrong mention of a statutory provision in an application is not sufficient to invalidate the application and thus, wrong quoting of provision of law is not a ground to dismiss the petition in view of the law declared by the Apex Court. Therefore, the dismissal of application filed under Section 47 read with Section 151 CPC on the ground of wrong quoting of provision of law is hereby set aside.

While deciding the application, the trial Court did not consider various grounds urged in the main petition to set aside the sale filed under Section 47 CPC which deals with execution, discharge or satisfaction but the same law is applicable even to the

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<sup>1</sup> (2017)9 SCC 700

main petition also. However, the order under challenge before this Court is not reasoned based on the grounds urged in the petition. Therefore, the order of the Court below is hereby set aside by exercising the power under Section 115 CPC while remanding the matter to the executing Court for disposal keeping in view the judgment of the Apex Court in **Pankajbhai Rameshbhai Zalavadia<sup>1</sup>**.

With the above directions, the Civil Revision Petition is allowed and the matter is remanded. The executing Court is directed to dispose of the main petition as expeditiously as possible in any event not later than six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

23<sup>rd</sup> January 2018

**NOTE:** Issue CC by one week  
B/O  
RRB