

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5835 & 5840 of 2018

COMMON ORDER:

Since the issue involved in both the revisions is one and the same, the Civil Revision Petitions are disposed of by this common order.

2. The petitioner, who is a third party to the suit proceedings filed I.A.Nos.139 of 2018 and 140 of 2018 in I.A.No.192 of 2013 in O.S.No.98 of 1986 on the file of Additional Senior Civil Judge, Narasaraopet, to implead him and for stay of sale of item No.6 of the schedule property, in the auction to be conducted by the Advocate Commissioner. The dismissal of the said Interlocutory Applications lead to filing of the present Civil Revision Petitions.

3. Originally the first respondent herein filed O.S.No.98 of 1986 for partition of the plaint schedule properties against respondent Nos.2 to 8 and the same was decreed partly. Aggrieved by the same, the first respondent preferred an appeal before this Court in A.S.No.1015 of 2000 and the same was allowed on 21.12.2012. After allowing the said appeal, the first respondent herein filed I.A.No.192 of 2013, for ascertaining their share in pursuance of the preliminary decree. During pendency of the said petition, the first respondent executed an agreement of sale in favour of the petitioner on 21.08.2013, in respect of item No.6 of the plaint schedule property. It is stated that after execution of the said agreement, the first respondent did not

come forward for registering the same. Contrary to the said agreement, the first respondent intended to auction item No.6 in final decree as it was possible for partition. On coming to know about the same, the petitioner got issued legal notice and the same is received by the first respondent herein. Subsequently, a reply came to be filed by the first respondent with false averments. Thereafter, the petitioner herein filed O.S.No.26 of 2018 on the file of XIII Additional District Judge, Narasaraopet, Guntur, against the first respondent and the same is pending. Thereafter, the Court below issued a publication for auction of item No.6 of the plaint schedule property. Then the petitioner filed I.A.Nos.139 and 140 of 2018 for impleading himself in the said petition as well as for grant of stay of auction of the property, in the final decree petition. It is stated that after filing of counters and after conducting a detailed enquiry, the Court below dismissed the petitions on an erroneous views and facts of law. Hence, the present revision petitions came to be filed.

4. It is the case of the petitioner that the property which the petitioner claims to have purchased from the first respondent cannot be put to partition and as such the same is sought to be auctioned. Accordingly, the Advocate Commissioner was appointed to auction the same.

5. From the facts referred to above, it is clear that the property which the petitioner claims to have purchased from the first respondent did not fell to the share of the plaintiff. Be that as it may, it is also to be noted that the agreement of sale was executed pending final decree proceedings and as such it is not enforceable in view of the judgment of this Court in **Rukya Bee Vs.**

Sd.Afzal and others¹, wherein it was held that a third party who purchased the property cannot be ordered to come on record for final decree proceedings, more particularly, in a suit for partition.

6. Having regard to the above circumstances, the petitioner is not entitled to come on record as respondent No.8. Hence, I see no grounds to interfere with the order passed by the Court below. At this stage, learned counsel for the petitioner would submit that since the property is put for auction, the petitioner may be permitted to participate in the same. It is needless to observe that if the law permits, the petitioner is always at liberty to participate in the auction, in accordance with law.

7. Accordingly, the Civil Revision Petitions are disposed of. No costs.

8. As a sequel thereto, Miscellaneous Petitions pending if any in these Civil Revision Petitions, shall stand closed.

26.10.2018
vhb

C. PRAVEEN KUMAR, J

¹ 2005 (4) ALD 463