

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.6796 OF 2017

ORDER :

This Civil Revision Petition is filed by the petitioners/J.Drs against order dated 20.09.2017 in E.P.No.40 of 2009 in O.S.No.222/2006, wherein the Court below overruled the objections raised by the petitioners/judgment debtors and passed orders for taking further steps.

Learned counsel for the petitioners submits that the judgment debtors jointly held 2/3rd share in the Ac.0.15 cents in building bearing D.No.2-07, situated at Kummaripurugu Palem, Mogalthur Mandal Sub-Registrar's Limits, West Godavari District. He submits that even in the schedule shown in the EP, only 2/3rd property belongs to the JDRs can be sold, as per orders in E.A.No.75 of 2010 dated 11.04.2016, but the settlement of terms dated 07.11.2017 goes to show that entire Ac.0.15 cents is ordered to be sold, which is illegal. He submits that auction notice is not in consonance with the settlement of terms issued on 07.11.2017, wherein the entire property was sought to be auctioned.

On the other hand, learned counsel for the respondent/decree holder submits that auction notice is issued on 11.11.2017 is only in respect of 2/3rd share belongs to the judgment debtors in the entire Ac.0.15 cents, as such, there is no infirmity in the order passed by the Court below.

In this case, it is to be seen that the suit O.S.No.222 of 2006 is of the year 2006 and same is decreed on 21.02.2009. When petitioner/decreed holder filed EP No.40 of 2009, the sister of Judgment Debtors filed E.A.No.75 of 2010 under Order 21 Rule 58 CPC claiming 1/3rd in the EP schedule property, wherein the executing Court allowed the same and in consequence, the schedule in EP No.40 of 2009 was amended stating that only 2/3rd of the EP schedule property belongs to the petitioners/Judgment Debtors has to be sold in terms of the claim petition in E.A.No.75 of 2010. As rightly contended by the learned counsel for the respondent/decreed holder though the said aspect is not specifically mentioned in the settlement of terms dated 07.11.2017, but in the auction notice dated 11.11.2017, it is clearly mentioned that only 2/3rd share out of an extent of Ac.0.15 cents was only sought to be sold. It is also pertinent to mention here that when the sister of judgment debtors filed EA No.75 of 2010, the judgment debtors have not filed any counter and they remained *exparte*, as such, judgment debtors, without any basis, cannot contend that they have no saleable interest in the entire EP schedule property. As far as other plea that the property is valued at Rs.60 lakhs is concerned, the Court below observed that the judgment debtors can furnish their own valuation supported by any document. The trial Court also observed that the judgment debtors cannot contend anything contrary to the findings in E.A.No.75 of 2010 filed by the sister of judgment debtors under Order 21 Rule 58 CPC.

That apart, when this Court granted interim stay on 06.12.2017 on condition of the petitioners paying 1/4th of the decretal amount within a period of six weeks, the same was also not complied with. The petitioners/judgment debtors have raised all these objections only to drag on the proceedings in order to deny the respondent/decreed holder to enjoy the fruits of decree.

In view of above facts and circumstances, the trial Court has rightly considered the issue in proper perspective and passed impugned order. Learned counsel for the petitioners has not brought any illegality or infirmity in the order passed by the Court below for exercising the power under Section 115 of Code of Civil Procedure, as such, this Civil Revision Petition is liable to be dismissed and accordingly same is dismissed.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

05-02-2018

Note: Issue CC in 2 days.

B/o.kvs

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