HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.20298 of 2018

ORDER: (Per Sri Justice M.S.Ramachandra Rao)

The petitioner along with respondent Nos.7 and 8 jointly purchased Ac.6.25 gts in Sy.No.64 of Bandalguda Jagir village under registered sale deed dt.29-01-2008 (document No.536 of 2008).

2. After the said purchase, the petitioner and respondent Nos.7 and 8 came to know that a civil suit O.S.No.150 of 2005 was pending with regard to the said property before the IV Additional District Judge, Ranga Reddy District. They were impleaded as parties in the said suit, and suit was subsequently settled and the settlement was reduced into writing on 27-04-2015.

3. As per the said settlement deed executed between the contesting parties to the said suit, an extent of Ac.1.10 gts was jointly given to respondent Nos.7 and 8 and the petitioner and they gave up their right in the remaining land covered by the registered sale deed dt.29-01-2008 (Doc.No.536 of 2008).

4. Petitioner contends that after execution of the deed of settlement dt.27-04-2015, petitioner and respondent Nos.7 and 8 became joint owners of Ac.1.10 gts and each of them had undivided share therein and there was no partition by metes and bounds as per their entitlement.

5. The 3rd respondent, on 23-01-2016 issued a proclamation of sale of i/3rd share of the property of Ac.1.10 gts in Sy.No.64 of Bandlaguda Jagir village belonging to petitioner and respondent Nos.7 and 8 on the ground that the 7th respondent had outstanding tax dues of Rs.19.69 crores excluding interest and other charges which arose in connection with search and seizure proceedings at the premises of the 7th respondent Company; that 7th respondent offered its 1/3rd undivided share in the above land as well as other immovable properties owned by it for the purpose of attachment; that the 3rd respondent proposes to conduct auction of the undivided 1/3rd share of the 7th respondent and asked the petitioner to buy out the 7th respondent, but the petitioner gave a reply on 09-03-2017 expressing his inability to buy and stating that he had no objection if the undivided 1/3rd share of 7th respondent is sold by 3rd respondent.

6. It is not in dispute that the 3rd respondent however issued a certificate of sale in Form No.I.T.C.P.20 (under Rule 65 of the Second Schedule to the Income Tax Act, 1961) on 24-04-2017 *not of the undivided 1/3rd share of the 7th respondent* but alienating a specific area of Ac.0.16 gts. equivalent to 2016 sq. yards *within the specified boundaries* in favour of 4th respondent without there being any partition of the respective shares of petitioner, respondent Nos.7 and 8 and though their shares were still undivided.

7. Petitioner contends that 3rd respondent had no right to issue the said certificate of sale on 24-04-2017 and to get it registered as document

No.2353 of 2017 before the Sub-Registrar, Gandipet, Ranga Reddy District with specific boundaries and at best he can only issue certificate of sale in respect of undivided 1/3rd share of 7th respondent. It is also contended that 4th respondent thereafter executed two registered sale deeds document Nos.3768 of 2018 and 3769 of 2018 on 13-04-2018 in favour of respondent Nos.5 and 6 and even the said sale deeds have to be set aside.

8. It is contended that 3rd respondent had no jurisdiction to partition the properties by metes and bounds by specifying the share of the 7th respondent which only a Civil Court can do in a civil suit filed for partition by one of the joint shares; and that the 3rd respondent arrogated to himself the jurisdiction of the Civil Court to effect the said partition and his action is illegal.

9. In this Writ Petition, the petitioner assails the action of the Tax Recovery Officer-3, Office of the Principal Commissioner of Income Tax-3, Hyderabad (3rd respondent) in issuing certificate of sale in Form No.I.T.C.P.20, which is registered as Document No.2353 of 2017 in the name of the 4th respondent Company and also the subsequent action of the 4th respondent in executing the two registered sale deeds in favour of respondent Nos.5 and 6 vide document Nos.3768 of 2018 and 3769 of 2018.

10. Petitioner contends that the action of the 3rd respondent is arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India and to set aside the certificate of sale issued by 3rd respondent in

File No.TRC 173/TRO-3/AACCR1230Q/2016-17 dt.24-04-2017, which was registered as document No.2353 of 2017 and also document Nos.3768 of 2018 and 3769 of 2018 registered by the Sub-Registrar, Gandipet, Ranga Reddy District.

The stand of the 3rd respondent

11. Counter-affidavit is filed by 3rd respondent stating that 7th respondent-Company had tax dues of Rs.19.69 crores, that 7th respondent had disclosed that it had 1/3rd share in Ac.1.10 gts of land at Bandlaguda Jagir, Rajendra Nagar Mandal, Ranga Reddy District along with petitioner and 8th respondent; that petitioner is also an accomplice in the business dealings of 7th respondent; that attachment notices were issued on 08-12-2009, 08-01-2010 and 13-01-2010 to attach the properties of 7th respondent in Form No.ITCP-16; they were sought to be auctioned for recovery of the tax dues of the 7th respondent and notice for settling sale proclamation in Form No.ITCP-17 dt.25-01-2017 was issued; a letter dt.23-01-2017 was served on 7th respondent, to the petitioner and 8th respondent for filing their claim and for declaring their shares and specific portion in the undivided property; in the said letter, the petitioner was directed along with other joint owners to obtain partition by demarcating their respective shares; and it was stated that petitioner and 8th respondent would be given priority over the other bidders for purchasing the subject property as they were co-owners. Copy of the said letter dt.23-01-2017 was not filed by respondents.

12. It is further stated that 7th respondent gave a letter dt.06-02-2017 stating that he had no objection for sale of the properties and sought 15 days time to enable the petitioner and 8th respondent by convincing them to execute a partition deed. It is stated that though 3rd respondent waited for more than 15 days, there was no response and so the 3rd respondent went ahead with the sale of the 1/3rd share of land owned by 7th respondent in the subject land and executed a sale deed on 13-03-2017 in favour of 4th respondent for Rs.2,92,32,000/-. It is stated that 4th respondent paid this amount by 28-03-2017 and the said amount was adjusted towards tax dues of the 7th respondent.

13. It was stated that petitioner and the 8th respondent were informed about the sale of 1/3rd undivided share of 7th respondent in the public auction held on 13-03-2017 by letter dt.20-03-2017; they were requested to identify the extent of land to be registered and sold in favour of the purchaser; and for 'vaasthu' purpose, 1/3rd portion of land abutting the main road, leaving a 36 ft access to the remaining portion of the land has been demarcated and registered in favour of the 4th respondent by 3rd respondent on 24-04-2017.

14. It is contended that 7th respondent sought to have the auction stayed by filing W.P.No.7964 of 2017, but it was dismissed as withdrawn on 10-03-2017; another W.P.No.10744 of 2017 was also filed, which was dismissed on 13-03-2017; and 7th respondent is now attempting to get the sale set aside with the help of petitioner more than a year later. It is

contended that the grievance of the petitioner lacks *bona fides* and the Writ Petition is filed only to aid the 7th respondent.

15. It is contended that petitioner and respondent Nos.7 and 8, having requested the Income tax Department to conduct sale of the property in a particular manner, cannot now go back on the same.

16. It is stated that the sale having occurred in April, 2017, the Writ Petition filed on 15-06-2018 is belated and that the person aggrieved by the sale can apply under Section 61 of the Second Schedule to the Act to the Tax Recovery Officer to set aside the same, but the petitioner had not done so. It is contended that the Writ Petition is not maintainable in view of the said alternative remedy.

The stand of respondents 5 and 6

17. Respondent Nos.5 and 6 also filed a counter-affidavit adopting the stand of the 3rd respondent. They contended that the sale in favour of 4th respondent is valid in law and respondent Nos.5 and 6 acquired title to the said property. They also claimed to have constructed compound wall and commercial mulgis and alleged that the petitioner had deliberately suppressed these facts. They adopted the stand of the 3rd respondent.

The consideration by the Court

18. Heard Sri B.Bal Reddy, learned counsel for petitioner, Sri N.Rajeshwar Rao, learned Assistant Solicitor General appearing for 1st respondent, Sri B.Narasimha Sarma, learned Standing Counsel for

respondent Nos.2 and 3 and Sri P.Sravan Kumar Goud, learned counsel for respondent Nos.5 and 6.

19. It is not in dispute that petitioner along with respondent Nos.7 and 8 are the joint owners of Ac.1.10 gts in Sy.No.64 of Bandlaguda Jagir village, Gandipet Mandal, Ranga Reddy District as per the settlement deed obtained in O.S.No.150 of 2005. Thus each of them have undivided 1/3rd share in the property. There was no partition by metes and bounds as per their entitlement.

20. According to the counter filed by 3rd respondent, for recovery of tax dues of the 7th respondent, attachment notices were issued attaching undivided 1/3rd share of 7th respondent in the above land on 08-12-2009, 08-01-2010 and 13-01-2010. The auction notice dt.13-02-2017 issued by 3rd respondent also mentioned that only 1/3rd share in the above land is going to be sold in public auction.

21. If so, even if the petitioner stated that he had no objection to the sale of the said undivided share in his letter dt.09-03-2017 addressed to the 3rd respondent, it is not open to the 3rd respondent to sell an unidentified portion of the said land without there being any partition between the petitioner and respondent Nos.7 and 8.

22. The 3rd respondent could only have sold the undivided portion of 1/3rd share of the 7th respondent in the said property leaving it to the purchaser to file a suit for partition and get his share demarcated in the said suit for partition.

23. In **M.V.S. Manikayala Rao v. M. Narasimhaswami**[1] it was held:

> *"...It is well settled that the purchaser of a coparcerner's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased."*

24. This principle equally applies to property jointly held even it is not joint family property.

25. Only a Civil Court can affect such partition and 3rd respondent has no jurisdiction to do so.

26. No provision is quoted by the 3rd respondent empowering the 3rd respondent to arrogate to himself the power to partition the property jointly held by a tax payer jointly with others.

27. Thus, the action of 3rd respondent in issuing certificate of sale of specific immovable property in Form No.I.T.C.20 vide file No.TRC173/TRO-3/AACCR1230Q/2016-17 dt.24-04-2017 is wholly without jurisdiction and violates Article 14 and 300-A of the Constitution of India.

28. When the action of 3rd respondent is thus wholly without jurisdiction, the existence of alternative remedy under Rule 61 of Second Schedule to the Act to the Tax Recovery Officer by way of filing an application to set aside the sale, does not bar this Court from entertaining

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[1] AIR 1966 SC 470

this Writ Petition (See **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others**[2]).

29. Accordingly the writ petition is allowed; It is declared that the action of the 3rd respondent in issuing the certificate of sale in Form No.I.T.C.P.No.20, which is registered as document No.2353 of 2017 in favour of 4th respondent is illegal and violative of Article 14 and 300-A of the Constitution of India and the said sale certificate/document No.2353 of 2017 is set aside; and the consequential sale deeds executed by 4th respondent in favour of respondent Nos.5 and 6 on 13-04-2018 vide document Nos.3768 of 2018 and 3769 of 2018 on the file of the Sub-Registrar, Gandipet, Ranga Reddy District are also set aside. The 3rd respondent is directed to execute a certificate of sale in Form No.I.T.C.P.20 in favour of 4th respondent only in respect of 1/3rd undivided share of the 7th respondent in the said property and after execution of the said certificate sale, the same shall be got registered with the Sub-Registrar, Gandipet, Ranga Reddy District; liberty is given to the 4th respondent to file a Civil Suit for partition of Ac.1.10 gts in Sy.No.64 of Bandlaguda Jagir Village, Gandipet Mandal, Ranga Reddy District and get the 1/3rd share purchased by him from the 3rd respondent demarcated by metes and bounds. The respondents 5 and 6 shall remove all the structures erected by them in property after purchase by them from the 4th respondent within 4 weeks.

[2] (1998) 8 SCC 1

30. The Writ Petition is allowed accordingly with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by 3rd respondent to the petitioner within four (04) weeks.

31. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 24-01-2020
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