

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**CIVIL REVISION PETITION No.5383 of 2017****O R D E R:**

This civil revision petition is filed by the petitioners/ Judgment debtors under Section 115 of the Code of Civil Procedure (in short "CPC") against the Orders passed by the learned Junior Civil Judge, Atmakur in EA.No.154 of 2007 in EP No.85 of 2003 in O.S.No.140 of 2001, dated 09.06.2010.

2. The case of the petitioners before the Executing Court in brief is that the respondent filed EP No.85 of 2003 against them to execute the decree in OS.No.140 of 2001 for realization of decretal amount of Rs.30,854/- only and brought EP schedule property for sale, which is wet land cultivated under K.C.canal water by raising two crops a year. They submit that the EP schedule land is to an extent of Ac.5.00, worth Rs.50,000/- per acre, but the respondent purposely undervalued the land and shown its market value as Rs.1,00,000/- and the Court Amin valued the EP schedule land for Rs.2,00,000/-, but at the

time of settlement of terms, the Court has not taken into consideration the decree amount and extent of the property to be sold and put the entire property for sale, which is knocked down by the respondent/decreed holder for partly sum of Rs.2,04,000/- only, which also confirmed by the Court and then the respondent took possession of the property through process of the Court. It is the contention of the petitioners that they came to know about the sale of their property in Court auction when the respondent entered the land and they made enquiries and they also placed the matter before the elders, wherein they offered to pay the entire decretal amount, which was also advised by the elders, but refused by the respondent and thereafter they made representation before the Lok Adalat to settle the dispute amicably, wherein the respondent not turned up, though received notice. The main contention of the petitioners is that instead of selling the property to the extent which is necessary to realize the decree amount of Rs.32,615/-, the Court below ordered sale of entire Ac.5.00 of land,

which knocked down by the respondent for partly amount of Rs.2,04,900/-, which caused substantial loss to them, as they have no other property, except the EP schedule property, which sale is not valid, which is conducted in violation of mandatory provisions. They pray to set aside the sale held on 06.10.2004, which confirmed on 19.01.2005 and restore the possession of the petition schedule land to them.

3. The respondent filed counter before the trial Court, denying the averments in the petition filed by the petitioners, stating that it is false to say that Ac.5.00 of land is worth Rs.5,00,000/- and the Court Amin also valued the land at Rs.2,00,000/-. He submits that the EP schedule property, which is sold in the Court auction is one plot and the entire plot was put to public auction, as Court cannot divide the land and put such portion of that land in public auction, which rightly done by the Executing Court. It is also the contention of the respondent that attachment of property was made before Judgment and the petitioners engaged an Advocate in

the suit as well as Execution petition, but not raised any objection at any stage, but filed petition only after confirmation of the sale and they have not deposited the decretal amount to set aside the sale. He prays to dismiss the petition.

4. Before the trial Court, the petitioners examined PW.1, PW.2 and got marked Exs.A1, A2. On behalf of the respondent, RWs.1 to 4 were examined. Exs.B1 to B3 were marked.

5. After hearing both sides, the Executing Court dismissed the petition filed by the petitioners, on the ground that the petitioners failed to file petition under Order XXI, Rule 89 or 90 of CPC, within the stipulated time and sale was conducted as per rules. It appears that the Court below considered the petition filed by the petitioners, as if they sought for declaration.

6. At the first instance, the petitioners aggrieved by the Orders by the Executing Court filed Civil Miscellaneous Appeal No.1 of 2010 before the Senior Civil

Judge, Atmakur, which was allowed as per Orders, dated 07.09.2011, wherein the learned appellate Judge set aside the Orders passed by the Junior Civil Judge, Atmakur in EA No.154 of 2007 in EP No.85 of 2003 in OS.No.140 of 2001. Aggrieved by the Orders passed by the learned appellate Judge, the respondent preferred CRP No.5083 of 2011 before this Court on the ground that against the dismissal Orders passed in a petition filed under Section 47 of CPC, no appeal lies and remedy is only a revision. After accepting the contention of the learned counsel for the respondent who filed CRP No.5083 of 2011, this Court set aside the Orders passed by the Senior Civil Judge, Atmakur in CMA No.1 of 2010.

7. As this Court set aside the Orders passed in CMA No.1 of 2010 in CRP No.5083 of 2011, dated 17.06.2013 the petitioners/Judgment debtors filed revision petition against the Orders passed by the Junior Civil Judge, Atmakur, stating that the Order of the Court below is contrary to law, weight of evidence and probabilities of the case. They submit that the Executing Court failed to

properly exercise the jurisdiction vested in it and ignored the provision of Order XXI, Rule 64 and 66 of CPC while conducting the sale.

8. I have heard both sides.

9. The learned counsel for the revision petitioners Mr.S.Raja Sekhar would submit that against dismissal of petition filed under Section 47 of CPC, the revision alone lie, due to that reason only when the respondent preferred CRP No.5083 of 2011, against the Orders passed in CMA No.1 of 2010, this Court after considering the precedent law and amendment to the Code of Civil Procedure, allowed the revision with an observation that the lower appellate Court has committed jurisdictional error in entertaining the Civil Miscellaneous Appeal, even though no such appeal was maintainable before it. He would further submit that as appeal is not maintainable, the petitioners who are aggrieved by the Orders passed by the Junior Civil Judge, Atmakur in EA No.154 of 2007, filed the present revision petition. It is the contention of the learned counsel for the revision petitioners that as

per Order XXI, Rule 64 of CPC, it is the duty of the Executing Court to sell the portion of the property is necessary to satisfy the decree and it cannot sell the entire property depriving the petitioners to enjoy their property, simply because they fell due some partly amount to the respondent/Decree holder. He prays to allow the revision petition.

10. The learned counsel for the respondent would submit that the revision filed by the petitioners itself is not maintainable on the ground that the petitioners instead of filing petition under Order XXI, Rule 89 of CPC within the time prescribed by depositing decretal amount, came up with a petition under Section 47 of CPC. He further submit that the respondent has been in possession and enjoyment of the EP schedule property since the date of his purchase and spent lot of amount for improvement of the land, now this Court cannot deprive the respondent from enjoying the land on the ground of alleged irregularities in conducting sale. He prays to dismiss the revision petition.

11. Now, the issue that emerges for consideration by this Court is:

"Whether the Order under challenge is sustainable, tenable and whether the same warrants any interference of this Court under Section 115 of CPC?"

12. POINT: Before going to the merits of the case, it would be beneficial to quote Section 47 of CPC and Order XXI, Rule 64 of CPC, which reads as under:

"47. Questions to be determined by the Court executing decree:-

- (1) *All questions arising between the parties to the suit in which the decree was passed, or their, representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*
- (2) *[x x x x]*
- (3) *Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*

Explanation I: For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II: (a) For the purposes of this section, a purchaser of property at a sale in execution of a

decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section”.

“Order XXI, Rule 64. Power to order property attached to be sold and proceeds to be paid to person entitled.—

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same”.

13. On perusal of Section 47 of CPC, which makes it clear that question arises in execution petition with regard to discharge or satisfaction of the decree, shall be determined by the executing Court, not by a separate suit. It is not in dispute that the petitioners are the Judgment debtors, against whom the respondent obtained a decree for a sum of Rs.30,854/- only. It is also not in dispute that the property of the petitioners, which is agriculture land, to an extent of Ac.5.00 put to sale on 06.10.2004, which is purchased by the

respondent for Rs.2,04,000/-. The learned counsel for the revision petitioners relied on the *ratio* laid down by this Court Full Bench in ***Guntupalli Rama Subbayya, Petitioner. vs. Guntupalli Rajamma, Respondent***¹, wherein after discussing the amendment to the Code of Civil Procedure in the year 1976 held that the appeals filed against determination on any question within Section 47, C.P.C. after the Amendment Act came into force, are saved by Section 97 (2)(a) provided orders appealed against were passed before February 1, 1977. Such appeals are saved by Section 97 (2)(a) in as much as before the coming into force of Section 3 of the Amendment Act omitting "Section 47 or" from the definition of "decree", there existed a vested right of appeal against such orders which were admittedly within the fold of the unamended definition of "decree".

14. As per the *ratio* laid down by the Full Bench of this Court in the decision relied on by the learned counsel for the revision petitioners, against the Orders passed by the

¹ AIR 1988 AP 226

Court below in a petition filed under Section 47 of CPC, no appeal lies and revision alone lie under Section 115 of CPC. The respondent questioned the Orders passed by the appellate Court in CMA No.1 of 2010 on the ground that the appeal is not maintainable and this Court accepting the contention of the respondent held that the lower appellate Court has committed a serious jurisdiction error in entertaining the Civil Miscellaneous Appeal, even though no such appeal was maintainable before it. Now, the respondent cannot be permitted to turn around and plead that revision is not maintainable and appeal alone is maintainable against the Orders passed in it under Section 47 of CPC.

15. On perusal of Order XXI, Rule 64 of CPC, which makes it clear that Court executing a decree can bring and sale the property of such portion thereof as may seem necessary to satisfy the decree. It is settled law that the executing Court derives jurisdiction under the Rules to sell properties attached only to the point at which the decree is satisfied and no sale can be allowed

beyond the decretal amount. Any wrong exercise in that respect goes to the root of the jurisdiction, and it can be questioned even at a later stage of the matter (*vide* Orders in Malempati Harinarayana vs.Vankayalapati Subba Rao and others. 2013 (3) ALD 525)

16. The Hon'ble Apex Court in ***Balakrishnan vs.Maliayandi Konar***² held that *no sale can be allowed beyond the decretal amount. Whether the property is one or several items Court has to see and sell only sufficient portion. This is Court's obligation and not discretion. Else, sale is illegal. The Court must not proceed to sell all the items of property when proceeds of some items sold suffice to satisfy the decree.*

17. In the present case, admittedly the respondent obtained a decree for Rs.30,854/- only against the petitioners and brought entire agricultural land of the petitioners to an extent of Ac.5.00 for sale, by showing the market value of the property as Rs.1,00,000/- @

² AIR 2006 SC 1458

Rs.18,000/- per acre, but the Court Amin valued the property for Rs.2,00,000/-. The learned Junior Civil Judge, Atmakur without following the provisions of Order XXI, Rule 64 of CPC, put the entire Ac.5.00 of land for sale, instead of portion of the land when decretal amount is Rs.30,854/- only. Even, the market value as stated by the respondent and value fixed by the Court Amin, are taken into consideration, the EP schedule property is Rs.2,00,000/- then only Ac.1.00 of land is brought to sale, which was suffice to satisfy the decree of the respondent, which failed to consider by the Court below, while conducting the sale and thereby grossly violated the mandatory provisions of Order XXI, Rule 64 of CPC, which makes the sale conducted by the executing Court on 06.10.2004 is illegal.

18. As per Rule 66 (2) of Order XXI of CPC, emphasizes allowing other things that:

a)the property to be sold [or, where a part of the property would be sufficient to satisfy the decree, such part];

b)the revenue assessed upon the estate or part of the state, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

c)any encumbrance to which the property is liable;

d)the amount for the recovery of which the sale is ordered; and

e)every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

19. Though, the petitioners who are Judgment debtors got option to file a petition under Order XXI, Rule 89 of CPC, but the provisions of Section 47 of CPC not speaks that the Judgment debtors are not entitled to invoke the provision when on the face of it the sale which was conducted by the Court is illegal. Therefore, simply because the petitioners have not invoked provisions of Order XXI, Rule 89 of CPC, which cannot be said that they cannot file a petition under Section 47 of CPC.

20. In the light of what is stated and discussed above while accepting the contention of the learned counsel for the revision petitioners, the contention advanced on behalf of the respondent cannot be accepted, as

whenever a sale is conducted in open Court, it imbibes the character and nature of regularity in its conduct in as much as a presumption has to be raised in orderly conduct of such activity. But, the material on record painfully leaves such an impression that there was no auction nor there was a proper sale in terms of Order XXI, Rules 64 and 66 of CPC.

21. Therefore, accepting the objections of the revision petitioners in respect of the sale in question, setting aside the Orders of the Court below, this Civil Revision Petition has to be allowed.

22. In the result, this Civil Revision Petition is allowed setting aside the sale and consequential Orders of sale confirmation and delivery of possession of the property to the respondent in pursuance of the sale conducted by the Court on 06.10.2004 in respect of EP schedule property. The Executing Court shall hold fresh sale of the EP schedule property meticulously following due procedure and shall also consider if entire extent of EP schedule land is required to be sold to satisfy the sale

warrant amount or not. The costs of sale now set aside shall be borne by the respondent/Decree holder. The respondent is entitled for refund of sale amount being auction purchaser and if stamps are purchased and sale certificate is engrossed if any, it shall be presented to the authority under the Stamp Act, for refund subject to such limitations as applicable. There shall be no order as to costs. As sequel thereto, all miscellaneous petitions if any, shall stand closed. Interim Orders if any, shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date :23.01.2023

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THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

CRP No.5383 of 2017

Date : 23.01.2023

Bsv