

**Dr.Y.LAKSHMANA RAO
REGISTRAR GENERAL**



Dorechan

AMARAVATI

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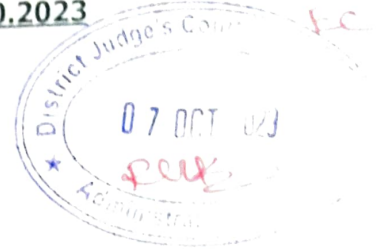
ROC No.605/SO/2023

Dated 03.10.2023

To

All the Principal District Judges in
Andhra Pradesh.

Sir,



Check & Sub High Court of Andhra Pradesh – Order dated 31.07.2023 passed in
Civil Revision Petition No. 23 of 2022 by the Hon'ble High Court of
Andhra Pradesh – Forwarded – Reg.

Ref. Order dated 31.07.2023 passed in Civil Revision Petition No. 23 of
2022 by the High Court of Andhra Pradesh.

Adverting to the subject and reference cited, as directed, I am forwarding
herewith the copy of Order dated 31.07.2023 passed in Civil Revision Petition No. 23
of 2022 by the Hon'ble High Court of Andhra Pradesh, as well as circular issued by
the High Court earlier in ROC.No.1911/SO/2016, dated 21.07.2016, for information,
compliance and necessary action.

Further, I also request you to communicate the aforesaid Judgment and
circular to all the Officers in your Unit and to the Presiding Officers of Labour
Courts/Tribunals in the District working under the control of the High Court, for
information, compliance and necessary action.

Flouting of the circular instructions will be viewed seriously.

Yours sincerely,

Y. Lakshmana Rao
03/10/2023
REGISTRAR GENERAL

Encl: As stated.

*P.No: 6184
07/10/23*

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI
Civil Revision Petition No.23 of 2022

Between:

Chandolu Rama Rao, S/o Kotaiah,
Aged 68 yrs, Hindu, D.No.7-245(2),
Sujatha Nagar, 4th line,
Ongole, Prakasam District.

.....Petitioner/
Auction purchaser

A n d

Pothuri Rambabu,
S/o Lingaiah, Hindu, cultivation aged 41 yrs,
r/o Anamanamuru village,
Korisapadu Mandal, Addanki, Prakasam Dt.
and others

.....Respondents

DATE OF ORDER PRONOUNCED : 31.07.2023

SUBMIT FOR APPROVAL:

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No ✓
2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No ✓
3. Whether Her Ladyship wish to see the fair copy of the order? Yes/No ✓


B. S. BHANUMATHI, J

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Put up note
for submitting
to HCJ
↓
26/7/23
RG

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI
+Civil Revision Petition No.23 of 2022

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 Korisapadu Mandal, Addanki, Prakasam Dt.
 and others

....Respondents

! Counsel for the petitioner : Sri D.Bala Raju

^ Counsel for the Respondents :

Sri Koti Reddy Idamakanti for R-1

Smt Marella Radha for R-3 and R-4

Sri Ramachandra Rao Guṛram for R-5 to R-11

< Gist:

> Head Note:

? Cases referred:

THE HON'BLE MS JUSTICE B.S.BHANUMATHI

CIVIL REVISION PETITION No.23 of 2022

ORDER:

In the present case an anomaly arose out of non-observation of the Circular of the High Court for the State of Telangana and the State of Andhra Pradesh vide ROC No.1911/SO/2016 dated 21.07.2016 directing all the Judicial Officers working in the state of Andhra Pradesh to forward a copy of order directing or raising attachment of any property to the Registrar or Sub-Registrar concerned for the record purpose.

2. This revision petition is filed under Section 115 CPC against the order dated 19.09.2019 dismissing petition in E.A.No.3 of 2019 in E.P.No.27 of 2014 in O.S.No.11 of 2013 on the file of the Court of Senior Civil Judge, Addanki filed by the auction purchaser under Order 21 Rule 90 CPC to cancel the sale dated 04.04.2017 in E.P.No.27 of 2014 and for refund of the amount of Rs.30,04,000/- with accrued interest to the petitioner.

3. The facts leading to filing of the petition and the case of the petitioner/auction purchaser are briefly as follows:

The 1st respondent got a decree in O.S.No.11 of 2013 against the second respondent and filed E.P.No.27 of 2014 for

Case

realization of the decreed amount by sale of the property of the second respondent/JDr.

EP schedule property:

Prakasam District - Markapuram District Registration - Addanki SRO - Korisapadu Mandal - Pichikalagudipadu village - Survey No.374 - An extent of Ac.8.97 cents of dry land within the following boundaries:

East: Kalikam China Raghava Reddy

South: Ragam Yanadi

West: Panthulu Subba Rao

North: Karavadi Meeravali

4. Proclamation of sale to be held on 21.11.2016 was ordered on 14.10.2016 and EP was adjourned to 28.11.2016. On 21.11.2016, the sale was adjourned to 25.11.2016. Meanwhile, third respondent who is the daughter of the second respondent/JDr filed a claim application contending that she got 1/3rd share in the EP schedule property obtained as per the preliminary decree dated 17.06.2016 in O.S.No.320 of 2014 on the file of the VII Additional District Judge, Ongole. Thereafter, the sale was adjourned several times and finally on 04.04.2017, the auction for sale of the property was held in which the petitioner stood the highest bidder for Rs.30,04,000/- and paid Rs.6,60,835/- on that day and later paid the balance amount on 18.04.2017 and thus paid the total sale warrant amount of

contd
12/11/17

Rs.30,04,000/- along with registration charges in Court. Later, the matter was posted for confirmation of sale. Still the claim petition was pending. But meanwhile, some decree holders filed petitions against the sale proceeds of EP schedule property for ratable distribution. Those petitions were also pending. The petitioner came to know that a decree holder in O.S.No.5 of 2013 by name Vemula Srinivasa Rao filed E.P.No.24 of 2014 in O.S.No.5 of 2013 on the file of Family Court, Ongole against the second respondent herein/JDr for recovery of decretal amount of Rs.14,20,981/- and got sold items No.1 to 3 therein in the auction held on 01.03.2018 and out of these three items, item No.2 is an extent of Ac.5.88 cents covered in S.Nos.374, 375 of Pitchikalagudipadu village of Korisapadu Mandal and the properties were purchased by Mangalapudi Koti Reddy, S/o Venkata Reddy for an amount of Rs.38,00,000/- for item No.2 and the sale was confirmed on 01.05.2018 by returning the claim petition of the claim petitioner herein. The said property is part and parcel of schedule property in the present EP No.27 of 2014. As the matter stood thus, another decree holder Navuluri Nageswara Rao filed E.P.No.33 of 2015 in O.S.No.76 of 2014 on the file of Family Court, Ongole in which item No.1 property to an extent of Ac.3.22 cents in Survey Nos.374, 375 of Pitchikalagudipadu village was sold to DHr Navuluri Nageswara Rao for Rs.26,00,000/- and the sale was confirmed on

Correct
15/05/22

14.08.2018. The said property is part and parcel of the schedule property in E.P.No.27 of 2014. Therefore, the petitioner filed this petition to set aside sale in respect of the very same properties which were already sold in the other execution petitions as the sale is infructuous.

5. The 1st respondent/DHr filed counter opposing the petition and denying the allegations in the petition and further stating that the bid amount can be returned only after satisfying the grounds under Order 21 Rule 93 CPC only and that the petitioner was well aware of the claim petition filed by the daughter of JDr and it is absolutely incorrect that in view of the pendency of the application, the sale was not confirmed. It is further stated that the sale was duly held by Court by following due procedure contemplated under law and this petition is filed in collusion with other DHrs to cause loss to the DHr and that there are no *bona fide* grounds.

6. After hearing both sides, the execution Court dismissed the petition observing that by the time the sale in this execution petition was conducted, no sales were affected by the Family Court at Ongole and since sales were held subsequent to filing this case, they were not binding on the 1st respondent/DHr and that even though the petitioner has knowledge about the same, he kept quiet after a long time and filed a petition which is not at all maintainable as per Order 21, Rule 90 CPC. It is further

could
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observed that the EP schedule property of Ac.8.97 cents in S.No.374 of Pitchikalagudipadu village is within the boundaries by East: Kalikam China Raghava Reddy, South: Raagam Yanadi, West: Panthulu Subba Rao and North: Karavadi Meeravali. But the petitioner contends in E.P.No.24 of 2014 in O.S.No.5 of 2013 that Ac.5.88 cents is covered by Survey Nos.374, 375 of Pitchikalagudipadu village sold in E.P.No.27 of 2014 and the said property is bounded by East: Talamala Kodanda Rami Reddy land, South: Ragam Yanadi Land, West: Ragam Yanadi Land and North: Eeda Venkateswara Reddy land and so the survey numbers and extent of said item No.2 in E.P.No.24 of 2014 and the present EP schedule are different properties. It is further observed that EP schedule property in E.P.No.33 of 2015 is an extent of Ac.3.22 cents in S.Nos.374 and 375 of Pitchikalagudipadu village within the boundaries mentioned therein. So, the version of the petitioner is that present EP schedule property was already sold in the above two EPs cannot be considered. It is further observed by the execution Court that the petitioner has not pleaded and made out any irregularity in the sale in this execution petition for seeking the relief of setting aside the same and that unless and until irregularity or fraud in conducting the sale is proved, the relief cannot be granted.

Conceded
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7. Having aggrieved by the order, this revision petition is filed.

8. The learned counsel for the petitioner has submitted that the EP schedule property in the present petition is the total extent of the land sold in the other two EPs and the execution Court failed to correctly appreciate the matter. He further submitted that there is another major irregularity in conducting the sale while the petition filed by the daughter of the second respondent/JDr making a claim is pending, and therefore the execution court ought to have allowed the petition.

9. The learned counsel for the 1st respondent/DHr fairly accepted the fact that the very same property was sold in auction in the other two execution petitions and the purchasers were also put in possession of the property. He further accepted the fact that by the time the property was sold in auction in this execution petition, the claim petition filed by the daughter of the 2nd respondent/JDr was pending.

10. Since the order of attachment of the property preceding the same was not communicated to the Sub-Registrar, there was no occasion for the execution Court in the other two EPs to know that this property was already under attachment in this execution petition. Because of lack of communication which is necessary, at times, the *bona fide* purchasers are facing trouble.

Handwritten signature or initials.

So as to avoid such contingencies, this High Court issued the following Circular vide ROC No.1911/SO/2016 dated 21.07.2016 directing to intimate the order of attachment to the Registrar concerned.

“Upon considering the request of the State Government of Andhra Pradesh, the High Court hereby directs all the Judicial Officers working in the State of Andhra Pradesh to forward a copy of the orders of attachments passed in respect of any property under litigation and also copy of orders, whenever attachments are raised, to the concerned District Registrar/Sub-Registrar to record the same in their registers and to place the same online to enable the public to find the same in encumbrance Certificate.

All the Judicial Officers of the concerned courts shall also maintain a separate register to record the entries relating the communication of the said orders to the District Registrar/Sub-Registrar”. (underline is used to lay emphasis)

Inspite of such Circular incidents of the kind of the present case are happening.

11. Since the petition was filed under Order XXI Rule 90 CPC, it is mentioned below:

“90. Application to set aside sale on ground of irregularity or fraud.

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, whose interests are affected by the sale, may apply to the Court to set aside

contd.

the sale on the ground of a material irregularity or fraud in publishing or conduction it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up”.

12. Though there is no irregularity in the procedure for conducting the auction with regard to publication of notice etc, there is yet another material irregularity in proceeding with the sale while the claim petition filed by the daughter of 2nd respondent/JDr was pending. Order 21, Rule 58(1) says:

“58. Adjudication of claims to, or objections to attachment of, property.

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained: **Provided** that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or
(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed”.

Contd



13. The above provision mandates adjudication of the claim or the objection before the sale is made, unless the proviso applies. The execution Court has not at all considered the said aspect and proceeded to dismiss the petition as though the sale is regular in all aspects. The claim petition was filed after the proclamation of sale. The property was not by then sold. The execution Court did not record that the claim was designedly or unnecessarily delayed. When the claim petition was pending, the execution Court proceeded with the sale.

14. Though the execution Court stated that there is no match between the properties sold in the present execution petition and the property sold in other two execution petitions, even, the 1st respondent/DHr agrees with the contention of the petitioner that the property in the present EP is covered by the property in the other two execution petitions. It can be examined from the comparison of these properties.

EP schedule property in E.P.No.33 of 2015:

Prakasam District -Registration Addanki Sub Registration -
Pichikalagudipadu village - Survey No.374, 375 an extent of Ac.3.22
cents of dry land within the following boundaries:

East: Kaliki China Raghava Reddy land

South: Ragam Yanadi and others land

West: Polamraju Venkata Subba Rao land

North: Ragam Yanadi land

Concl
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E.P. schedule property in E.P.No.24/2014

Prakasam District Registration - Addanki Sub-Registration --
Pichikalagudipadu village - Survey No.374, 375 an extent of Ac.5.88
cents of dry land within the following boundaries:

East: Talamala Kodanda Rami Reddy land
South: Ragam Yanadi land
West: Ragam Yanadi land
North: Eeda Venkateswara Reddy land

E.P. schedule in E.P.No.27 of 2014

Prakasam District - Markapuram District Registration - Addanki SRO
- Korisapadu Mandal - Pichikalagudipadu village - Survey No.374 -
An extent of Ac.8.97 cents of dry land within the following boundaries:

East: Kalikam China Raghava Reddy
South: Ragam Yanadi
West: Panthulu Subba Rao
North: Karavadi Meeravali

15. Therefore, here, it is a case fit to cancel the sale and refund the same amount deposited by the petitioner/auction purchaser along with the interest accrued thereon till the date of payment.

16. In the result, the revision petition is allowed by setting aside the impugned order dated 19.09.2019 dismissing petition in E.A.No.3 of 2019 in E.P.No.27 of 2014 in O.S.No.11 of 2013 on the file of the Court of Senior Civil Judge, Addanki and the

Court
RBSJ

said petition is allowed and the trial Court is directed to cancel the sale and refund the same amount deposited by the petitioner/auction purchaser along with the interest accrued thereon till the date of payment.

17. The Registrar General is directed to take steps for consideration by this High Court to make a provision in the Rules of Practice regarding the directions given in the above said Circular and meanwhile to forthwith re-circulate the above said Circular to all the Courts with a direction to strictly comply the same, failing which a stringent action against those err in complying it would follow.

Miscellaneous Petitions, if any pending, in this Civil Revision Petition, shall stand closed.



JUSTICE B.S.BHANUMATHI

Date : 31-07-2023

PNV

CRP No.23 OF 2022

Dt.31.07.2023

PNV

District Court, Vizianagaram,
Date: 13.10.2023.

Copy communicated to all the Judicial Officers in the District with a request to download the copy of the ROC No.605/SO/2023 dt.03.10.2023 of the Honourable High Court of Andhra Pradesh, Amaravathi, along with copy of Order dated 31.07.2023 passed in Civil Revision Petition No. 23 of 2022 by the Hon'ble High Court of Andhra Pradesh, as well as Circular issued by the Hon'ble High Court earlier in ROC.No.1911/SO/2016 dt.21.07.2016 from districts.ecourts.gov.in/vizianagaram, for information, compliance and necessary action.

Copy communicated to Senior Superintendents (HC, CN), Superintendents (CS, RK, Translator), District Court, Vizianagaram.

Copy communicated to System officer, Ecourt Project, District Court, Vizianagaram with a direction to upload the above ROC in District Court website.


Principal District Judge,
Vizianagaram.

.Dis.No. 428 Date: 13.10.2023.