

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.285 of 2016

Dated 5-8-2016

Between:

Rachakonda Vijaya Sri and another.

..Appellants.

And:

Gonuguntla Venkateswarlu (died) and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.285 of 2016

JUDGMENT:

This appeal is filed questioning order dated 19-2-2016 in E.A.No.41 of 2015 in E.P. No.17 of 2010 in O.S.No.269 of 2005 on the file of XIII Additional District Judge, Narasaraopet.

Appellants herein who are J.Drs.4 and 5 filed application under Order XXI Rules 105 and 106 C.P.C. to set aside exparte order dated 7-10-2004 in E.P.No.17 of 2010 and to permit them to prosecute the proceedings.

Appellants contended that E.P. is filed for execution of decree passed in O.S.No.269 of 2005 and that they came to know that they were set aside in execution proceedings and that they have got substantial case in their favour and therefore, exparte order dated 7-10-2004 is liable to be set aside.

D.Hr. filed counter disputing the affidavit averments of the appellants and contended that the sale terms were settled long back i.e., on 18-2-2011 and the objections raised by J.Dr. were rejected on 19-12-2012 and since then matter was coming up for sale and in spite of granting time, appellants did not file their counter and therefore, they were set exparte on 7-10-2004 and

ultimately ordered for sale.

Considering the contentions and rival contentions of both parties, trial court dismissed the application holding that the appellants failed to show sufficient cause for their absence on 7-10-2004. Aggrieved by the same, present appeal is preferred.

Heard both sides.

I have perused the material papers. As seen from the record, appellants appears to have made their appearance in E.P. on 23-9-2014, thereafter, it was adjourned to 7-10-2014 for filing counter. On 7-10-2014, no counters are filed on behalf of appellants herein who are J.Drs.4 and 5 and therefore, they were set exparte and the matter was posted to 14-10-2014 and from there, it was adjourned to 30-10-2014 and finally, sale was conducted on 22-12-2014.

This application is filed only after sale of property i.e., on 29-12-2014 i.e., one week after sale proceedings.

As seen from affidavit filed in support of the petition, the appellants contended that deponent appeared before the court on 22-12-2014 and if really that is true, there is no explanation from the appellants as to why they have not raised any objection for conduct of the sale or that they have not filed application to set aside the exparte order on that day. Trial court on verification of the conduct of appellants recorded a finding that appellants were not diligent in prosecuting their case right from the beginning and they are in the knowledge of the proceedings. Further, when the appellants sought for setting aside the exparte order, burden is on them to show sufficient cause for their absence on the day on which they were set exparte. Entire affidavit is silent as to why they did not attend court on 7-10-2014 and why they did not take such step of filing petition to set aside the exparte order till 29-12-2014. When there was no explanation at all for



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Dvs