

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Civil Revision Petition No.1937 of 2023****ORDER:**

Heard learned counsel for the petitioner.

2) This Civil Revision Petition is being disposed of at the admission stage.

3) The Suit in O.S.No.8 of 2002 on the file of the IV Additional District Judge, Kakinada, was filed against the defendants therein for declaration of title to the plaint schedule property and for recovery of possession, after ejecting the defendants therefrom, and for mesne profits. The Suit was accordingly decreed. Thereafter, E.P. No.8 of 2017 on the file of the IV Additional District Judge, Kakinada, was filed by the plaintiff being the decree holder for recovery of mesne profits. In the said E.P., the decree holder sought for sale of two items of immovable properties i.e. Ac.2.74 cents of land and a house property.

4) During the pendency of the said E.P., the revision petitioner herein, who is a third party to the said Suit and the decree, has filed a claim petition under Order 21 Rule 58 CPC alleging that she is the owner of land, in an extent of Ac.2.74 cents, in question, which is sought to be sold in execution of the decree.

She claims to be the owner of the said land by virtue of a registered settlement gift deed, dated 21.01.2012. But, the said claim petition was dismissed for default because of the absence of the claim petitioner before the Court. Thereafter, the claim petitioner filed a petition to restore the said petition on to the file of the Court along with a delay condonation petition. The said two petitions are now pending consideration before the Executing Court.

5) Now the grievance of the petitioner is that when the said petitions are pending consideration by the Executing Court that the land in question is now put to sale in execution of the said decree. Therefore, the present revision petition is filed seeking stay of the said sale till the disposal of the said restoration petition and the delay condonation petition filed by the petitioner herein.

6) In fact, no order passed by the Executing Court is challenged in this revision petition. Therefore, the revision petition itself, in the considered view of the Court, is not maintainable. However, as the petitioner is now claiming to be the owner of the said land by virtue of a registered settlement gift deed, this Court is of the considered view that this revision petition can be disposed of with a direction to the Executing Court to dispose of the said two

petitions viz., restoration petition and delay condonation petition filed by the petitioner herein expeditiously before bringing the said property for sale. This would serve the purpose of the petitioner in the facts and circumstances of the case.

7) Resultantly, the Civil Revision Petition is disposed of at the admission stage directing the learned IV Additional District Judge, Kakinada-the Executing Court, to dispose of the two petitions filed by the petitioner for restoration of the claim petition along with the delay condonation petition expeditiously before bringing the land in question to sale. The Executing Court shall also decide the claim petition filed by the petitioner, if it is restored on to its file, expeditiously. Till the said restoration petition and the delay condonation petitions are disposed of, as directed, the auction shall not be confirmed. No costs.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:10.08.2023.

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