

B. Narasappa Vs. B. Govindappa

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Court : Andhra Pradesh

Decided On : Aug-01-1991

Reported in : 1992(1)ALT48

Judge : N.D. Patnaik, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115, 141 and 151 - Order 26, Rule 9

Appeal No. : Civil Revision Petition No. 833 of 1989

Appellant : B. Narasappa

Respondent : B. Govindappa

Advocate for Def. : A. Bhaskara Chari, Adv.

Advocate for Pet/Ap. : P. Veera Reddy, Adv.

Judgement :

ORDER

N.D. Patnaik, J.

1. In execution of the mortgage decree obtained by the first respondent, the hypothecated property was brought to sale in EP No. 59/83 in O.S. No. 13/81 on the file of the District Munsif's Court, Kalyandurg. The petitioner herein and

another filed a claim petition -EA No. 72/85 contending that they are the purchasers of the property and that the property has been sold at a low price. They filed another application EA No. 157/88 to appoint a Commissioner to inspect the land in question in order to ascertain its value. The learned District Munsif dismissed the application, against which this revision is filed.

2. The learned District Munsif held that the provisions of Order 26, Rule 9 CPC are not made applicable to execution proceedings in view of Section 141 C.P.C. and therefore, dismissed the petition.

3. In this revision, the learned counsel for the petitioner has contended that though the petition under Order 26, Rule 9 CPC is not maintainable, it can be maintained under Section 151 CPC under inherent powers of the Court. But what the learned counsel for the respondent contends is that when once under Section 141 CPC the provisions are not applicable to execution, it is not open to invoke Section 151 CPC and appoint a Commissioner which is not otherwise permissible under the provisions of the Civil Procedure Code. I agree with the contention of the learned counsel for the respondent and also the order of the Lower Court that it is not open to appoint a Commissioner in execution proceedings. Therefore, there are no merits in the revision petition. The revision is dismissed. No costs.