

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

DATE.24-02-2011.

**PRESENT**

THE HON'BLE SRI JUSTICE G. KRISHNA MOHAN REDDY

**CIVIL MISCELLANEOUS APPEAL No.1416 OF 2004**

**Between:**

S. Nageswaramma. --- Appellant/  
Respondent.

AND

G. Giddappa and ten others. --- Respondents.

The Court made the following:

**THE HON'BLE SRI JUSTICE G. KRISHNA MOHAN REDDY**

**CIVIL MISCELLANEOUS APPEAL No.1416 OF 2004**

**ORDER:**

This Civil Miscellaneous Appeal is directed against order dated 08-01-2004, passed in E.A. No.930 of 2001 in E.P. No.202 of 2001 in O.S. No.125 of 1997, on the file of the Court of Additional Senior Civil Judge, Kurnool.

2. The appellant is the first respondent in the E.A. and applicant – decree holder in the E.P. and plaintiff in the suit whereas, the respondents Nos.1 to 9 are the petitioners and the respondents Nos.10 and 11 are the respondents 2 and 3 in the E.A. For the sake of convenience, the parties hereinafter will be referred as they are arrayed in the execution application before the lower Court.

3. The said Execution Application was filed under Order 21, Rules 98 to 109 of C.P.C. to declare the decree passed in O.S. No.125 of 1997 as null and void so far as Item No.1 of the E.P. schedule property is concerned on the ground that the petitioners therein purchased the same property from Lalithamma absolute owner of the property during her life time under valid documents marked as Exs.A-1 to A-9 and further without any manner of right the same property was attached in the Execution Petition for the purpose of selling it and realizing the fruits of the decree.

4. The first respondent i.e. decree holder filed her counter denying the claim of the petitioners. Further, the respondents Nos.2 and 3 filed separate counters admitting the sale deeds in favour of the petitioners. On behalf of the petitioners, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 4<sup>th</sup> of them got themselves examined as P.Ws. 1 to 5 and further examined P.Ws.6 to

9 and got marked Exs.A-1 to A-9. Taking into consideration the material available on record, the lower Court upheld the claim of the petitioners i.e. allowed the Execution Application. Hence, aggrieved by the same, the present Appeal has been preferred.

5. Heard the learned counsel for the petitioners and the Respondents. It is contended on behalf of the first respondent that in the written statement filed in the suit, no claim was made with regards to the sales of the property which disproves the sales claimed by the petitioners. It is also represented that originally the father-in-law of Lalithamma was the absolute owner of the property and after his death his son i.e., husband of Lalithamma succeeded to the property and he died on 02-02-1991 following which Lalithamma became the absolute owner of the property and she sold the property to the petitioners under the sale deeds marked and she died issueless on 03-06-1997. Further, it is important that Exs.A-1 to A-5 were executed on 02-05-1996 and Exs.A-6 to A-9 were executed on 15-05-1996 in respect of various extents of the property. Further, it is claimed in the suit by the first respondent that she happened to be a legal heir of Lalithamma and therefore she is entitled to her share as class II heir of Lalithamma. When Lalithamma died issueless and the sale deeds were executed by her, the first respondent is not entitled to claim any share therein as clause II Heir of Lalithamma.

Therefore, there are no merits in the Appeal. Accordingly, the Appeal is dismissed confirming the order passed by the learned Additional Senior Civil Judge, Kurnool. No order as to costs.

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**G. KRISHNA MOHAN REDDY, J**

Dated: 24-02-2011.  
Dsh.