

2022 LiveLaw (SC) 342

IN THE SUPREME COURT OF INDIA

M.R. SHAH; B.V. NAGARATHNA, JJ.

Special Leave to Appeal (C) No(s). 4382/2022; 28-03-2022

DOKALA HARI BABU *VERSUS* KOTRA APPA RAO & ANR.

Code of Civil Procedure, 1908; Section 64(2) and Order XXI Rule 58 - To get the benefit of sub-section (2) of Section 64 of the CPC, the objector and/or subsequent purchaser has to plead and prove that he is the *bona fide* purchaser, who has entered into the transaction prior to the order of attachment. (Para 4)

(Arising out of impugned final judgment and order dated 04-01-2022 in AS No. 172/2021 passed by the High Court of Andhra Pradesh at Amravati)

For Petitioner(s) Mr. R. Chandrachud, Adv. Ramesh Allanki, Adv Ms. Aruna Gupta, AOR Mr. Dokala Apparao, Adv. Mr. Syed Ahmad Naqvi, Adv.

ORDER

Mr. R. Chandrachud, learned counsel appearing on behalf of the petitioner, has relied upon sub-section (2) of Section 64 of the CPC and has submitted that the petitioner is a *bona fide* purchaser, who purchased the property in question prior to the order of attachment.

It is submitted that the Agreement to Sell was an oral agreement and on the basis of that, the petitioner purchased the property on 26.12.2014 and the Sale Deed was registered on 06.01.2015.

Learned counsel appearing for the petitioner has placed reliance upon some books-of-accounts to show that the amount of Rs.4,00,000/- towards the sale consideration was paid prior to the order of attachment and on the basis of that, it is sought to be submitted that the petitioner was the *bona fide* purchaser.

We have gone through the application filed by the petitioner under Order XXI Rule 58 of the CPC. In the entire application, there is no whisper and/or averment and/or pleadings that the petitioner is the *bona fide* purchaser and that there was an oral agreement prior to the order of attachment and that the part sale consideration/sale consideration of Rs.4,00,000/- was paid prior to the order of attachment. To get the benefit of sub-section (2) of Section 64 of the CPC, the objector and/or subsequent purchaser has to plead and prove that he is the *bona fide* purchaser, who has entered into the transaction prior to the order of attachment. In the present case, the same is missing.

Under the circumstances, it cannot be said that the executing Court as well as the High Court have committed any error in rejecting the objection/obstruction submitted by the petitioner under Order XXI Rule 58 of the CPC. We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed.

Pending applications stand disposed of.