



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE TWENTY EIGHTH DAY OF JULY  
TWO THOUSAND AND TWENTY ONE

**PRESENT**

**THE HONOURABLE SRI JUSTICE D RAMESH**  
**CIVIL REVISION PETITION NO: 123 OF 2021**

**Between:**

1. Gorusu Srinivasa Reddy, S/o. Appanna Reddy,  
Hindu, Aged about 50 Years, Occ.Cultivation,  
R/o.Dalipalem Village, Near NTPC, Parawada,  
Visakhapatnam District.

**...PETITIONER(S)**

**AND:**

1. Sk. Mahabub Subhani, S/o. late Madina, Muslim, aged about 57 years,  
Occ.Cooli, R/o.D.No.15-5-49, Near Gangirevu Chettu, Polimera Veedhi,  
Gavarapalem, Anakapalle, Visakhapatnam District.
2. Sk. Moula Bebe, W/o. Sk. Salar, R/o.15-5-49, Near Gangirevu Chettu,  
Polimera Veedhi, Gavarapalem, Anakapalle, Visakhapatnam District.
3. Sk. Ansar Vali, S/o. late Madina,  
Muslim, Aged about 57 years, Occ.Cooli, R/o.D.No.15-5-49, Near  
Gangirevu Chettu, Polimera Veedhi, Gavarapalem, Anakapalle,  
Visakhapatnam District.
4. SK. Umar Abdul Vali, S/o. late Madina,  
Muslim, Aged about 57 years, Cooli,  
R/o.15-5-49, Near Gangirevu Chettu,  
Polimera Veedhi, Gavarapalem, Anakapalle,  
Visakhapatnam District.

**...RESPONDENTS**

**Counsel for the Petitioner(s): P RAJASEKHAR**

**Counsel for the Respondents:**

**The Court made the following: ORDER**



**THE HONOURABLE SRI JUSTICE D.RAMESH**  
**CIVIL REVISION PETITION No.123 of 2021**

**ORDER:**

The Petitioner herein is the 1<sup>st</sup> respondent/D.Hr in E.A.No.5 of 2020 in E.P.No.22/2014 in O.S.79/2006.

2. The present revision is filed aggrieved by the notice dated 07.01.2020 passed in E.A.5/2020 in E.P.No.22/2014 in O.S.79/2006 on the file of the Principal Senior Civil Judge, Anakapalle. The petitioner filed O.S.79/2006 on the file of the Principal Senior Civil Judge, Anakapalle against the respondent nos.3 and 4 herein for recovery of an amount of Rs.5,42,000/- with subsequent interest based on a mortgage. On careful consideration, the trial Court has passed a preliminary decree on 17.10.2006 and when the respondents failed to pay the decretal amount, a final decree was passed on 28.12.2012. When the respondents failed to pay the said final decree amount, the petitioner filed E.P.No.22/2014 praying the Court below to order to sell the mortgaged property for realization of the decretal amount. Auction for sale of the mortgaged property was scheduled to be held on 13.12.2019. On the said date, the 1<sup>st</sup> and 2<sup>nd</sup> respondents i.e. third party claim petitioners filed the petition under Order 21 Rule 58 CPC. Initially the office has taken an objection and the same was returned. But without deciding the liability of the claim petition in a mortgage deed, the executing court entertained the claim petition filed by 3<sup>rd</sup> parties and numbered as E.A.No.5/2020. Aggrieved by the same, the present revision is filed.

3. Sri P.Rajasekhar, learned Counsel appearing on behalf of the petitioner has stated that initially Court below has taken an objection with regard to the maintainability and the same was adjourned on



several occasions and without deciding the said issue straight away numbered the E.A. and issued notice to the petitioner herein and the same is contrary to Order XXI Rule 58 CPC and also to several decisions of the High Courts. To support his contention, he mainly relied on two decisions reported in *T.Nabi Sab vs. G.Venkatesulu and another*<sup>1</sup>. Learned Counsel has strongly objected that the numbering of E.A is contrary to Order XXI Rule 58 CPC which reads as follows:

Order 21 Rule 58 CPC:

*"Adjudication of claims to, or objections to attachment of property - (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained".*

4. To support his contention he relied on a decision as mentioned above which held that the said provision is attracted only when an attachment of any property which is attached in execution of a decree. And the other judgment reported in between *Indian Bank, Nidadavole, Kovvur v. Nallam Veera Swamy and others*<sup>2</sup> in which it was recited that:

*The Madras High Court in MS Doraisami Iyer v. A.R.Arunachalam Chettiar (supra) and the Andhra Pradesh High Court in T.Nabi Sab v. G.Venkatesulu (supra), held that a claim petition under Order 21 Rule 58 is not maintainable in execution proceedings taken out in a mortgage decree.*

*M.S.Doraisami Iyer v. A.R.Arunachalam Chettiar (supra)*

*"7..... The application is one under Order 21 Rule 58, CPC. NO such application can be maintained in a proceeding in execution of a mortgage decree. Rule 58 of Order 21, CPC can come into play only when there is an attachment. In the case of mortgage there is no question of attachment and in this case, there was no attachment as such. Consequently, the application was not maintainable".*

*T.Nabi Sab v. G.Venkatesulu (supra)*

<sup>1</sup> (2008) 4 ALD 770

<sup>2</sup> (2015) 1 ALD 278



"3..... The impugned orders of the Courts below do not call for any interference as the decree obtained by the 1<sup>st</sup> respondent against 2<sup>nd</sup> respondent was mortgage decree and the provisions of Order 21 Rule 58 CPC are not attracted.

4. Order 21 Rule 58 CPC states as follows:

*Adjudication of claims to, or objections to attachment of property-(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained.*

*The above provision discloses that the said provision is attracted only where the claim is preferred, or objection is made to the attachment of any property which was attached in execution of a decree."*

*When a mortgage decree is passed, there is adjudication on the footing that the property in question belongs to the mortgagor. Since no attachment is required for bringing to sale the mortgaged property, no claim petition under Rule 58 of Order XXI CPC would lie, though, in general terms the other provisions contained in Order XXI CPC would be applicable in execution of a mortgage decree, excepting Rules 58, 83 and 89 thereof. In execution of a mortgage decree, only the incorporeal right is brought to sale and not the physical property. In juxtaposition to this, in execution of a money decree the physical or the real property is brought to sale.*

On perusal of the above said judgment and also as per provision of Order XXI Rule 58 CPC clearly establishes that the mortgage decree is passed and no attachment is required for sale in bringing the mortgaged property and no claim petition under Order XXI Rule 58 CPC would be applicable.

5. Though notices were served on the respondents 1 to 4 but no representation on behalf of respondents 1 and 2. Only on behalf of respondents 3 and 4 filed Vakalat and the learned Counsel argued that the court below has not decided any issue, only notices were



issued and the petitioners herein are entitled to take similar objections before the Court below with regard to maintainability instead of entertaining the revision and requested to remand the matter for deciding the maintainability of the I.A.

6. Considering the above submissions made by both the counsel and on perusal of the judgments relied on by the learned Counsel for the petitioner, it clearly shows that, once the mortgage decree is passed and against the mortgaged property no claim petitions are maintainable under Order 21 Rule 58 CPC. In view of the same, the claim petitions filed by the respondents 1 and 2 are not maintainable. Accordingly, the Civil Revision Petition is allowed and the learned Principal Senior Civil Judge, Anakapalle is directed to proceed with the Execution Petition. No costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Petition shall stand closed.

**JUSTICE D. RAMESH**

Date: 28.7.2021  
Rd



**THE HONOURABLE SRI JUSTICE D.RAMESH**

**CIVIL REVISION PETITION No.123 of 2021**

Dated 28.7.2021

RD