

**HIGH COURT OF ANDHRA PRADESH:: AMARAVATI****MAIN CASE No:C.R.P (SR).No.30817 OF 2023****PROCEEDING SHEET**

<b>Sl. No</b>	<b>DATE</b>	<b>ORDER</b>	<b>OF NO</b>
01.	28.08.2023	<p><b><u>RNT,J</u></b></p> <p>Heard Sri M. Rahul Chowdary, learned counsel representing for the petitioner's counsel.</p> <p>2. This C.R.P (SR) is filed under Article 227 of the Constitution of India challenging the endorsement dated 17.07.2023 made in I.A.No. (unnumbered) of 2023 (C.F.R.No.2515) in I.A.No.243 of 2013 in O.S.No.159 of 2003 on the file of the Principal Senior Civil Judge, Tirupati.</p> <p>3. The Registry of this Court returned the above (C.R.P.(SR) with the following objection:</p> <p>“Please clarify and state as to how this CRPSR is entertainable, against the (Office Objection, i.e, mere office objection of the lower court is not a ground to file the CRP in this Hon’ble High Court.”</p> <p>4. Learned counsel for the petitioner represented the same with the following endorsement:</p> <p>“Although the endorsement is prior to numbering of this application, it was signed by the Judicial Officer, amounting to judicial orders. The matter was refused to be called on bench even. Therefore, as petitioners have no other relief, petition under Article 227 is maintainable. “If the office is not convinced, please place the petition before the Hon’ble Court for necessary orders.”</p>	

		<p>5. The petition has been placed before this Court.</p> <p>6. Learned counsel for the petitioner submits that the plaintiff filed O.S.No.159 of 2003 on the file of Principal Senior civil Judge, Tirupati for partition. Preliminary decree dated 17.01.2008 was passed. In preparation of the final decree, on the plaintiff's application, order was passed for sale of Item No.I of the plaint schedule property. The legal representatives of the deceased-2<sup>nd</sup> defendant (present petitioners) filed un-numbered I.A.No.____ of 2023 dated 05.05.2023 for setting aside the sale dated 06.04.2023.</p> <p>7. The office of the learned Trial Court submitted, report with respect to the service no service of notice on the respondents in I.A. It also made endorsement that "there is no appeal intimation received by this court still so far", and also that "confirmation of sale scheduled, posted to 17.07.2023."</p> <p>8. The above report is at page 24 of the petition. At page No.23, of the petition, the learned counsel for the petitioner submits, is the order of the Principal Senior Civil Judge, Tirupati, which reads as under:</p> <p style="padding-left: 40px;">"Returned.</p> <p style="padding-left: 40px;">The noted Sections has no application to the facts. Hence returned".</p>	
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<sup>1</sup> (2001) 8 SCC 97

<sup>2</sup> (2010) 8 SCC 329

<sup>3</sup> (2003) 6 SCC 675

		<p>13. He further submits that the objection by the Registry of this Court is also untenable.</p> <p>14. Considering the aforesaid, the Registry of this Court is directed to allot number to the present C.R.P.</p> <p>15. There appears to be nothing in respect of the report of the office of the learned Trial Court, pointing out any defect in the application so as to return it for resubmission after rectifying the defects.</p> <p>16. The rejection by the learned Trial Court is not on any ground of defect, but that the Sections noted has no application.</p> <p>17. Prima facie, even if the learned Trial Court was of the view that the noted Sections had no application to the facts, the petitioner should have been given opportunity of hearing and on consideration of the arguments appropriate order, should have been passed.</p> <p>18. Let the Court concerned submit report, through learned Principal District Judge, Chittoor on the followings:</p> <ol style="list-style-type: none"> <li>i) The order does not bear any date.</li> <li>ii) As to why opportunity of hearing was not afforded to the petitioner.</li> <li>iii) Whether on the ground mentioned, the IA could be returned.</li> <li>iv) Under which legal provision such an order of return of IA could be passed.</li> </ol> <p>19. Post on 18.09.2023.</p>	
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