*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**

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+ Civil Revision Petition No.75 of 2015

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+ DT.16.04.2015

D.Jaipal

…Petitioner

Vs.

$ Ch.Krishna Reddy and another

… Respondents

^ Counsel for the Petitioner: Sri Kiran Palakurthi

! Counsel for the respondents: Sri T.Surya Satish

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> Head note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Revision Petition No.75 of 2015

–

Dated 16th April, 2015

Between:

D.Jaipal

…**Petitioner**

And

Ch.Krishna Reddy and another

…**Respondents**

Counsel for the petitioner: Sri Kiran Palakurthi

Counsel for the respondents: Sri T.Surya Satish

The Court made the following:

ORDER:

This civil revision petition arises out of order, dated 20.12.2013, in E.P.No.36 of 2013, in O.S.No.121 of 1993, on the file of the learned
I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

I have heard Sri Kiran Palakurthi, learned counsel for the petitioner, and Sri T.Surya Satish, learned counsel for the respondents.

The respondents filed O.S.No.121 of 1993 for specific performance of an agreement of sale against the petitioner. The said suit was decreed by the lower Court. The respondents have filed E.P.No.36 of 2013 for execution of the sale deed. The petitioner has filed counter affidavit in the said EP. The respondents appeared to have filed draft sale deed for verification before the lower Court. By order, dated 21.08.2014, the lower Court has directed the sale deed to be sent for registration.

Evidently, after receiving the registered sale deed, the lower Court has closed the EP.

The grievance of the petitioner is that the lower Court has committed a serious procedural illegality in not following the procedure prescribed by Order XXI Rule 24 CPC and Rule 213 of the Civil Rules of Practice. The learned counsel has submitted that in the judgment in O.S.No.121 of 1993, the lower Court has held that the respondents have the right to purchase the available land to the extent of 1.642 sq.yards as shown in Ex.B1, sketch map, and accordingly it has directed the respondents/plaintiffs to deposit balance sale consideration for the extent of 1.642 sq.yards. The learned counsel further submitted that in deviation of Ex.B1, the respondents have prepared a sketch for larger extent including even the road, which is being used by the petitioner as access to his balance land. The learned counsel has placed reliance on the judgment of the Supreme Court in **Pratibha Singh and another v. Shanti Devi Prasad and another**.

Sri T.Surya Satish, learned counsel for the respondents, submitted that while it appears that the petitioner has not participated in the proceedings before the lower Court after filing of the counter affidavit, which has evidently led to finalisation of the draft sale deed by the lower Court in his absence, his clients however have no objection for varying the sketch to bring it in line with Ex.B1, sketch, for an extent of 1.642 sq.yards of land.

Rule 34 of Order XXI CPC deals with execution of a document by the Court where the judgment debtor neglects or refuses to obey the decree. Under sub-rule (2) thereof, the Court shall cause the draft to be served on the judgment debtor together with a notice requiring his objections (if any) to be made within such time as it fixes in this behalf. Under sub-rule (3), where the judgment debtor objects to the draft, his objections shall be stated in writing within such time as fixed by the Court and thereupon the Court shall make such order approving or altering the draft, as it thinks fit.

Under Rule 213 of the A.P.Civil Rules of Practice and Circular Orders, 1980, if any question arises for the determination of the court executing a decree, the same shall be heard and determined upon the hearing of the petition or on an application made therein, and, if evidence is taken orally, the court shall record the evidence of the witness and mark all exhibits admitted in evidence, in accordance with Order

XVIII Rules 4 and 9 of CPC.

Dealing with the provisions of Order XXI Rule 34 in a similar situation, the Supreme Court in **Pratibha Singh** (*supra*), held as under:

> "….Order 21, Rule. 34 provides the procedure for execution of documents pursuant to a decree. Where a decree is for the execution of a document the decree-holder may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the Court. Thereupon the Court shall cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made out within time as the Court fixes in this behalf. Where the judgment-debtor objects to the draft, his objections shall be stated in writing and then determined. The draft shall be approved or altered consistently with the finding arrived at by the Court. In the present case the plaintiff-decree-holders pointed out that the defendant-judgment-debtors were aware of the contents of the draft sale deed. The fact remains that the draft sale deed accompanied by a notice requiring objections to be made by judgment-debtor as provided by sub-rule (2) of Rule 34 of O.21 of the CPC was not caused to be served by the Court. The record also reveals the judgment-debtors repeatedly insisting, may be dogmatically, on draft sale deed being delivered to them enabling objections being filed. There is no determination by the Executing Court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed was the property forming subject-matter of agreement to sell and the decree. Inasmuch as the possession is yet to be taken by the plaintiff-decree-holders, this aspect can still be taken care of and that we shall do by making an appropriate direction in the operative part of this order."

On the above findings, the Supreme Court has disposed of the appeal *inter alia* with the following directions:

> "The Executing Court shall, after going through the record of the case and after affording the parties an opportunity of hearing, decide upon the correctness of the map filed by the plaintiff-decree-holders during the execution proceedings and presently forming part of the Court sale deed dated 23-12-1998. If the Executing Court finds that the map forming part of the sale deed is not a correct map or needs to be rectified either wholly or in part, that shall be done and the map correctly drawn up under the orders of the Court shall then form part of the sale deed. The necessary deed of rectification shall be executed and registered under the orders of the Court. In that eventuality, the deed of sale deed 23-12-1998 shall take effect as rectified under the orders of the Executing Court."

Similar is the case on hand to the case decided by the Supreme Court in the above noted judgment. A perusal of the order, dated 20.12.2013, of the lower Court shows that there are references to the various docket proceedings commencing from 20.12.2013 to 14.11.2014. One of the docket orders shows that the draft sale deed was supplied to the petitioner and no objections were called for. Thus, without any notice to the petitioner after the draft sale deed was presented by the respondents, the executing Court has straightaway sent the same for registration.

In the light of the legal position discussed above, it is patently obvious that the procedure followed by the executing Court suffers from grave procedural illegality. Therefore, the lower Court is directed to consider the objections of the petitioner against the sketch enclosed to the registered sale deed and compare the same with Ex.B1, sketch. If variations between the two sketches are found, the lower Court shall rectify the sale deed and the sketch in line with the sketch in Ex.B1. This exercise shall be completed within three months from the date of receipt of a copy of this order.

Subject to the above directions, the civil revision petition is allowed.

As a sequel to disposal of the civil revision petition, CRP.MP.Nos.92 & 1313 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

16th April, 2015

Note: LR copies to be marked.

(b/o)

VGB