

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.3098 of 2014

ORDER:

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This Civil Revision Petition is filed under Section 115 CPC challenging the order dt.30-06-2014 in E.P.No.48 of 2008 in A.T.C.No.4 of 2004 on the file of the Junior Civil Judge, Palakonda.

2. The petitioners herein are the legal representatives of the J.Dr. in the said A.T.C. The said A.T.C. was filed by respondent herein against one H.Sanyasinaidu (J.Dr.) seeking his eviction under Section 13(a) of the A.P. (Andhra Area) Tenancy Act, 1956. The J.Dr. did not contest and remained absent. He was set exparte and an exparte decree was passed on 01-02-2007 directing his eviction.
3. Thereafter E.P.No.48 of 2008 was filed for execution of the decree by respondent against the petitioners mentioning that the J.Dr. had died by the time of filing of the E.P. The respondent sought delivery and possession of the property.
4. The petitioners filed counter-affidavit stating that the deceased J.Dr. was not a tenant under the petitioner; there is no landlord and tenant relationship between them; that the deceased J.Dr. had purchased the said property under an agreement of sale from respondent in 1994; and the petitioners are in possession of the property since then. They also contended that the decree in A.T.C. was an exparte decree and the E.P. is not maintainable.
5. By order dt.30-06-2014, the Court below allowed E.P.No.48 of 2008. It was contended before the Court below that the J.Dr. had

died even prior to passing of decree in A.T.C., but the Court below held that the petitioners did not adduce any evidence as to the time of death of J.Dr. It observed that they should have filed death certificate or at least stated about the date of his death. It held that the decree in A.T.C.No.4 of 2004 cannot therefore said to be passed after the death of the J.Dr. It also noted that a Civil suit has been filed for specific performance of agreement of sale but no stay of execution of decree in A.T.C.No.4 of 2004 had been granted; and being the executing Court, it cannot go behind the decree. It therefore held that the petitioners are liable to be evicted.

6. Questioning the same, this Revision is filed.
7. The learned counsel for petitioners contends that the decree in A.T.C. was obtained against a dead person; it is therefore a nullity and the execution thereof ought not to have been allowed by the Court below. He also contends that the civil suit filed for specific performance of agreement of sale allegedly executed by respondent in favour of J.Dr. is pending.
8. No material has been placed before the executing Court or before this Court to establish that J.Dr. had died prior to passing of decree in A.T.C.No.4 of 2004. Therefore, it cannot be said that the decree therein was passed against a dead person. In any event, the Executing Court cannot go behind the decree. The learned counsel for petitioners no doubt stated that the application for setting aside the exparte decree had been filed in the A.T.C, but the same is pending. He could not place before me any orders passed therein staying the execution of the decree in A.T.C., either by the Tenancy Tribunal or by the Civil

Court in the pending suit. Therefore, I am of the opinion that the petitioners, being the legal representatives of the deceased J.Dr., cannot resist execution of the decree in A.T.C.No.4 of 2004 and they are liable to be evicted from the subject property in execution of the said decree.

9. I do not find any merit in the Revision and is accordingly dismissed. No costs.
10. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-06-2015

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