

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2374 of 2015

ORDER:

This civil revision petition under Section 115 C.P.C. arises out of the order dated 15.04.2015 passed by the Executing Court of the learned

I Additional Junior Civil Judge, Eluru, in E.A.No.1130 of 2014 in E.P.No.129 of 2010 in O.S.No.850 of 2002. By the said order, the Executing Court reopened the execution proceedings and issued a fresh delivery warrant to the Field Assistant for removal of the constructions raised by the respondents in the E.P. in a strip of the schedule property which was annexed to the plaint plan. Aggrieved by the said order, the respondents in the execution petition are before this Court.

The admitted facts of the case are that judgment and decree dated 04.04.2005 were passed by the Court below in O.S.No.850 of 2002, whereby the respondent herein was held entitled to recover 24 square yards of the plaint schedule property shown in the rough sketch attached to the plaint plan in yellow colour, after evicting the defendants, the petitioners herein, therefrom. This judgment and decree were confirmed in appeal. The execution petition was filed for delivery of the plaint schedule extent of 24 square yards and was allowed on 08.04.2011. However, when the Field Assistant along with the Mandal Surveyor went to the suit schedule property, they found that the respondents in the execution petition, the petitioners herein, had constructed a building in a

7 feet width strip and therefore, the Field Assistant brought the said aspect to the notice of the Court and returned the warrant. Thereupon, the respondent/decreed holder filed E.A.No.617 of 2013 in the execution petition seeking a direction from the Executing Court to the Field Assistant to remove the structures in the suit property and handover the vacant property to him. The Field Assistant visited the

schedule property on 14.08.2014 and removed certain structures and delivered possession to the respondent/decree holder. Receipt to that effect was also executed by the respondent/decree holder on 16.08.2014. While so, the respondent/decree holder filed the subject E.A.No.1130 of 2014 in the execution petition alleging that certain constructions still remained and that the entire property shown in yellow colour in the plaint plan was not delivered to him. The Executing Court was of the opinion that no legal and effective delivery was made as the Field Assistant had not mentioned in the delivery report as to whether he had removed the RCC building with a width of 7 feet and length of 40 feet along with a concrete slab from the property. It was on this ground that the Executing Court opined that merely because the respondent/decree holder had issued a receipt, it should not be assumed that the warrant was fully executed.

It is relevant to note that in the suit decree, the plaintiff in the suit was held entitled to recover possession of 24 square yards of the plaint schedule property shown in the rough sketch in yellow colour, by evicting the defendants therefrom. There was no separate decree or direction for removal of structures by way of a mandatory injunction. In the light of the decree, as structured, delivery of the extent of 24 square yards of the suit property alone is envisaged. In that context, in the event any constructions occupy part of the suit extent of 24 square yards, it would be necessary to remove the same so as to deliver possession of the full extent of 24 square yards to the successful plaintiff as he had sought eviction of the defendants therefrom. It was therefore necessary that the Executing Court first examine as to whether the 24 square yards of land which was the suit extent was vacant and if not, to what extent it was occupied by structures. After such determination, removal of the offending portion of structures, which covered part of the suit extent of 24 square yards, would have to be carried out in terms of the decree. Without examining these aspects and completely overlooking the receipt already filed by the

respondent/decreed holder to the effect that he had received possession of the entire 24 square yards, the Executing Court directed removal of further constructions without determining the core issue.

The order under revision is therefore unsustainable on facts in the light of the suit decree and is accordingly set aside. This order shall however not preclude the respondent/decreed holder from filing an appropriate application before the Executing Court in accordance with law, if he has any grievance with regard to compliance with the suit decree.

The civil revision petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

28th August, 2015
IBL