

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.282 of 2015

Between:

T.Vijaya Kumar and another

.....Petitioners

and

Surajmal Aggarwal and another

.....Respondents

Date of Judgment pronounced : 10-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.No.282 of 2015

ORDER:

Heard Sri D.V.Srinivasa Rao, learned counsel for the

petitioners, Sri Sharad Sanghi, learned counsel for the respondents.

2. This Revision Petition is filed challenging the Order dt.05-12-2014 in E.A.No.6 of 2014 in E.P.S.R.No.163 of 2011 in R.C.No.77 of 2004 of the II Additional Rent Controller, City Small Causes Court, Hyderabad.

3. The petitioners herein are the J.Drs. in the E.P.S.R.No.163 of 2011. The said R.C. was filed for eviction of the petitioners by the respondents in respect of premises bearing No.21-2-189 described in the schedule to the R.C. as located in the Vallabhnagar, Gulzar house, Hyderabad. The R.C. was allowed and eviction of the petitioners was ordered on 23-07-2008 by the Rent Controller. The said order was confirmed by the appellate authority under the Act on 11-08-2010 and the said appeal filed by the petitioner was dismissed for default. Subsequently, the respondents filed E.P.S.R.No.163 of 2011 to execute the said decree. In the E.P. schedule, the description of the property was given as House bearing Municipal No.21-2-189, Vallabhnagar, Gulzar house, Hyderabad. However, the E.P. was returned with an objection that the description of the property therein is not correct.

4. Then the petitioners filed I.A.No.289 of 2011 in R.C.No.77 of 2004 under Order 6 Rule 17 CPC

contending that in body of the R.C., the R.C. schedule property was described as having Municipal No.21-2-189, Vallabhdas Building, Gulzar House, Hyderabad, but in the schedule to the R.C., it was erroneously described as having Municipal No.21-2-189, situated at Vallabhnagar, Gulzar house, Hyderabad; because of this discrepancy, difficulties in execution of the order of eviction in the R.C. have arisen; therefore, in exercise of the power under Order 6 Rule 17 CPC, the respondents may be permitted to correct the schedule property mentioned in the R.C. to reflect the building name as “Vallabhdas Building” in the place of “situated at Vallabhnagar”.

5. The said application was dismissed by the II Additional Rent Controller, City Small Causes Court, Hyderabad by order dt.05-06-2013 on the ground that the R.C. was no longer pending and so the respondents cannot invoke Order 6 Rule 17 CPC. The said order was not challenged by the respondents.

6. Thereafter, the respondents filed E.A.No.6 of 2014 in E.P.S.R.No.163 of 2011 requesting the Court to correct the decree by substituting words “Vallabhnagar” in the decree with the words “Vallabhdas Building”.

7. This application was opposed by the petitioners. They contended that examination of an order of eviction can be directed by the Rent Controller only

when the description of the petition schedule property is in inconfirmity with the actual identifiable property with regard to the location and locality and it cannot be done whimsically as sought by the respondents. They denied that there were any clerical errors or errors arising from any accidental slip or omission in the order passed by the Rent Controller in R.C.No.77 of 2004. They also pointed out that E.A.No.6 of 2014 had been filed on the execution side and not on the original side and the same is an abuse of process of law. It was also pointed out that I.A.No.289 of 2011 filed earlier by the respondents had been dismissed.

8. By order dt.05-12-2014, the Court below allowed the said E.A.No.6 of 2014 referring to its power under Section 153 CPC. It held that there is no dispute with regard to identity of the property and that instead of 'Vallabhdas Building' in the schedule to the R.C., it was mentioned as 'Vallabhnagar'. It accepted the plea of the respondent that in the para-3 (1) of the R.C., the property was described as having the name 'Vallabhdas Building' but in the schedule to the property, this was not mentioned and no objection to the identity of the property was raised in the R.C. at any point of time.

9. Challenging the same, this Revision Petition is filed.

10. Learned counsel for the petitioners contended that the application to amend the order of eviction and the R.C. cannot be sought in execution proceedings pending before the executing Court and the executing Court is bound by the contents of the order of eviction and it cannot amend the same.

11. I find considerable force in the contention of the learned counsel for the petitioners. It is settled law that executing Court cannot go behind the decree and has no power to amend the decree or order of eviction.

12. Therefore, the application E.A.No.6 of 2014 in E.P.S.R.No.163 of 2011 is clearly misconceived and the Court below ought not to have allowed the same by the impugned order.

13. Accordingly, the Civil Revision Petition is allowed and the order dt.05-12-2014 in E.A.No.6 of 2014 in E.P.S.R.No.163 of 2014 in R.C.No.77 of 2004 of the II Additional Rent Controller, City Small Causes Court, Hyderabad is set aside and the said E.A.No.6 of 2014 is dismissed. It is however made clear that this will not preclude the respondents from moving an appropriate application before the Rent Controller who ordered the eviction for appropriate relief. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-08-2015

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