

THE HON'BLE SHRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.1269 AND 2886 OF 2014

DATED 23rd JANUARY, 2015

CIVIL REVISION PETITION NO.1269 OF 2014:

Between:

Palle Upendra Devi and others.

... Petitioners

and

Basani Seetharam and another

... Respondents

CIVIL REVISION PETITION NO.2886 OF 2014:

Between:

Palle Upendra Devi and others.

... Petitioners

and

Basani Seetharam and another

... Respondents

THE HON'BLE SHRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.1269 AND 2886 OF 2014

COMMON ORDER

The petitioners in these two CRPs are one and the same. They are the judgment debtors in O.S.No.238 of 1993 on the file of the learned II Additional Junior Civil Judge, Warangal, which was decreed on 03.03.1999. Execution Petition No.57 of 2013 was filed by the decree-holders in the said suit, the respondents herein, seeking delivery of the vacant possession of the suit schedule property along with costs. The suit schedule property is a vacant plot, being Plot No.5 admeasuring 300 square yards in Sy.No.264 (old Sy.No.397), Waddepally, Hanamkonda, Warangal District. The suit, O.S.No.238 of 1993, was filed for recovery of possession of the said plot and the decree passed therein was confirmed in appeal in A.S.No.23 of 1999 by the learned IV Additional District Judge, Warangal. Aggrieved thereby, the petitioners herein filed Second Appeal No.474 of 2004 before this Court. However, the same was dismissed on 11.12.2012 and attained finality. A copy of the common judgment passed by this Court in Second Appeal No.474 of 2004 and batch is placed on record. On a perusal thereof, the following facts can be culled out:

The plaintiffs in O.S.No.238 of 1993, the respondents herein, claimed to have purchased the suit plot under a registered sale deed and alleged that the defendants, the petitioners herein, dispossessed them under the cover of the temporary injunction granted in their suit, O.S.No.910 of 1985 on the file of the learned

II Additional

Junior Civil Judge, Warangal. On the other hand, the claim of the defendants, the petitioners herein, was that the plot which was in their possession was an altogether different plot, being Plot No.606 situated in old Sy.Nos.402 and 403 of the village. They claimed that they had purchased the said plot, under an approved lay out, from the Central Excise Co-operative Housing Society.

It is interesting to note that the plot adjacent to the suit plot, being Plot No.6 admeasuring 303 square yards, was also the subject matter of litigation in O.S.No.271 of 1993 on the file of the learned Principal Junior Civil Judge, Warangal. The plaintiffs in the said suit claimed that they purchased the said plot under a registered sale deed and that they were dispossessed by the defendants in that suit under cover of the temporary injunction obtained by them in their suit, O.S.No.984 of 1985. The defendants in that suit claimed that the plot in their possession was Plot No.607 in Sy.Nos.402 and 403 of the village which was purchased by them, under an approved lay out, from the Central Excise Co-operative Housing Society.

The issue for consideration in both the suits therefore ran on similar lines. The suits were tried separately, but the findings of the Courts below were identical. The most crucial finding was that the plots bearing Nos.606 and 607, claimed by the defendants in the two suits, did not exist at all. This finding was subjected to appeal by the defendants in both the suits. A.S.No.19 of 1999 arose out of O.S.No.271 of 1993, while A.S.No.23 of 1999 related to O.S.No.238 of 1993. The learned IV Additional District Judge, Warangal, however dismissed both the appeals leading to the filing of second appeals before this Court. Second Appeal No.447 of 2004 related to O.S.No.271 of 1993, while Second Appeal No.474 of 2004 related to O.S.No.238 of 1993.

It may also be noted that O.S.No.910 of 1985 filed by the defendants in O.S.No.238 of 1993, the petitioners herein, for a permanent injunction was decreed but the same was reversed in appeal in A.S.No.95 of 2001 leading to Second Appeal No.953 of 2005 being

filed before this Court by the petitioners herein. All the three second appeals were disposed of by the common judgment dated 11.12.2012. This Court opined therein that determination of the dispute between the parties in the second appeals depended upon location of the properties purchased by them. Taking note of the fact that an Official Surveyor had been appointed in one of the suits and that he had filed his report recording his findings, this Court acted thereupon and found that the plots bearing Nos.606 or 607 did not exist. The approved lay out only showed 600 plots and there was no documentary evidence to support the creation of any other new plots. This Court further found that the Official Surveyor had located the plots of the plaintiffs in O.S.Nos.238 of 1993 and 271 of 1993 in Sy.No.264 of the village. This Court therefore held that no substantial questions of law arose for consideration and accordingly dismissed the second appeals.

E.P.No.57 of 2013 was filed by the plaintiffs-decree holders in O.S.No.238 of 1993, while E.P.No.5 of 2013 was filed by the plaintiffs-decree holders in O.S.No.271 of 1993. As stated earlier, the subject matter of O.S.No.271 of 1993 was Plot No.6 admeasuring 303 square yards situated in Sy.No.264 of Waddepally. E.P.No.57 of 2013 related to Plot No.5 admeasuring 300 square yards in Sy.No.264 of Waddepally.

While so, the petitioners herein filed E.A.No.197 of 2013 in E.P.No.57 of 2013 under Section 47 CPC alleging that the decree in O.S.No.238 of 1993 was not executable against them. In the affidavit filed in support of the application, they claimed that there was a strong dispute regarding the identity of the plot of land to be delivered in the E.P. They alleged that Plot No.5 claimed by the decree holders was a fictitious one and that they were showing Plot No.606 belonging to the first judgment debtor as Plot No.5. They further alleged that the decree holders in E.P.No.5 of 2013 on the file of the learned Principal Junior Civil Judge, Warangal, claimed part of Plot No.606 as being a part of Plot No.6, which was also an imaginary plot, and claimed delivery. According to them, in E.P.No.5 of 2013, the Bailiff had delivered the

raised by a party to the suit cannot be considered by the executing Court even if it may relate to the execution of the decree. Only the questions which arise in the course of execution and relate to the enforcement of the obligations arising under the decree should be treated as questions to be considered by the executing Court. Such questions would invariably be questions which were not raised before and decided by the trial Court. In effect, if a question was already raised before the trial Court and was decided at the trial, it would not be open to the parties to the decree to re-agitate it again at the stage of execution. Even a question which ought to have been raised by a party before the trial Court but was not so raised cannot be raised before or looked into by the executing Court.

Further, the executing Court cannot vary the conditions of the decree or go behind the decree (**JAI NARAIN RAM LUNDIA V/s. KEDAR NATH KHETAN**^[1]). In the present case, the judgment and decree in O.S.No.238 of 1993 stood merged with the reasoned judgment dated 11.12.2012 passed by this Court in S.A.No.474 of 2004. The existence of Plot No.606 claimed by the defendants in the suit was very much in issue in the suit proceedings and culminated in the finding affirmed by this Court in the second appeals that the said plot did not exist. However, the endeavour of the petitioners herein is to once again raise in execution the question as to the existence of the so-called Plot No.606. The executing Court could not therefore traverse behind the decree which had attained finality and record a finding contrary thereto by accepting the claim of the petitioners that Plot No.606 existed or that Plot No.5 was an imaginary plot. The application in E.A.No.197 of 2013 in E.P.No.57 of 2013 filed under Section 47 CPC was therefore utterly misconceived in its very inception and this Court finds no reason to interfere with the cogent opinion of the executing Court that the application was not maintainable and was liable to be dismissed.

In so far as E.A.No.196 of 2013 in E.P.No.57 of 2013 is concerned, the order passed by the executing Court dismissing this

application manifests that the petitioners herein were seeking to reopen the issue of localization of the suit plot in O.S.No.238 of 1993 and were trying to overcome the findings recorded by the Official Surveyor. As stated hereinbefore, the said findings were accepted and acted upon by this Court while rendering the judgment in the batch of second appeals. The attempt on the part of the petitioners, by way of subject EA, was to once again go behind the decree and seek variation of the findings recorded therein, which had attained finality, by seeking a fresh survey through an Advocate-Commissioner. The executing Court rightly recognized this attempt for what it was worth and rejected the request of the petitioners for appointment of an Advocate-Commissioner. The order passed by the executing Court dismissing this application therefore does not brook interference.

This Court therefore finds no error in either of the orders passed by the executing Court warranting interference under Section 115 CPC. Both the Civil Revision Petitions are accordingly dismissed. Interim order dated 23.04.2014 passed in CRP No.1269 of 2014 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

23rd JANUARY, 2015
PGS

[\[1\]](#) AIR 1956 SC 359