

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.850 of 2014

Date: 01-6-2015

Between

Dantuluri Sridhara Raju

... Revision Petitioner/
Respondent/JDR

and

Smt. Champati Indira

... Respondent/
Respondent No.11/JDR

Dantuluri Sathi Raju

and 9 others

... Respondents/DRs

HON'BLE SRI JUSTICE R.KANTHA RAO

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Order:

E.P.No.85 of 2012 in O.S.No.51 of 1991 on the file of Additional Senior Civil Judge, Eluru, West Godavari district was dismissed by order dated 11-6-2013 by allowing E.A.No.81 of 2013. The present civil revision petition is filed against the said order.

2. I have heard Sri Y.V.Ravi Prasad, learned counsel appearing for the revision petitioner/decreed holder. None appeared for the 1st respondent/judgment-debtor and respondents 2 to 11/judgment debtors.

3. For the convenience sake, the parties will be referred to as 'the decree holder' and 'judgment-debtors'.

4. The decree holder filed O.S.No.51 of 1991 on the file of the Principal Senior Civil Judge, Eluru, West Godavari district for partition of the suit schedule properties and the same was decreed. Some of the judgment-debtors, who are the defendants in the suit, preferred A.S.No.791 of 2002 on the file of this Court. The tenants of the schedule property filed A.T.C.No.4 of 1992. The A.T.C., was dismissed.

The respondents in the A.T.C., preferred C.R.P., against the orders in A.T.C.No.4 of 1992. A common judgment was delivered by this Court in A.S.No.791 of 2002 and C.R.P.No.562 of 2005. This Court by common judgment dismissed A.S.No.791 of 2002 and allowed C.R.P.No.562 of 2005 by setting aside the orders in A.T.C.No.4 of 1992. While delivering the common judgment, this Court made an observation that the persons who are in possession of the

property shall be evicted only by due process of law though they have no statutory protection. The said observation was made taking into consideration of the fact that the tenants have been in possession of the property since long time as noticed by the lower Court and therefore, they can be evicted only by due process of law. Thereafter, the decree holder filed E.P.No.85 of 2012 on the file of the Additional Senior Civil Judge, Eluru. The 11th respondent, wife of the 4th respondent, was brought on record as per the order dated 06-12-2012 in E.A.No.663 of 2011 passed by the executing Court as the legal representative of the

4th respondent. She filed E.A.No.81 of 2013 stating that the execution petition is not maintainable and is liable to be dismissed against her on the ground that as per the observation made by this Court in the common judgment, she can be evicted only by due process of law by bringing

a separate suit for eviction or recovery of possession.

The said petition was opposed by the decree holder contending that the petitioner is claiming rights through deceased 4th defendant, the High Court held that the

4th defendant is not a tenant and therefore, the

11th respondent cannot contend that the decree holder has to file a suit for recovery of possession against her and the E.P., is not maintainable. The executing Court accepted the plea of the 11th respondent and dismissed the E.P.

5. The question arises for consideration in the present civil revision petition is whether the E.P., is maintainable.

6. In the first place, it has to be noticed that this Court in the common judgment in A.S.No.791 of 2002 and C.R.P. No.562 of 2005 specifically held that Ch.Lokanadha Raju, husband of the 11th respondent, is not a statutory tenant under Andhra Pradesh Tenancy

Act. Therefore, as rightly contended by the learned counsel appearing for the petitioner, the 11th respondent cannot claim as successor-in-interest under the provisions of the A.P. Tenancy Act.

In fact, the rights of late Ch.Lokanadha Raju were adjudicated in the C.R.P., and the A.T.C., filed by him was dismissed on the ground that the schedule land was not an agricultural land. Ch.Lokanadha Raju was also a party to the proceedings before the Court since common judgment was passed in A.S.No.791 of 2002 and C.R.P.No.562 of 2005 and the common judgment is binding on the

11th respondent. Therefore, the decree holder can file an execution petition by adding Ch.Lokanadha Raju or his successor as party to the E.P., but he need not file a separate suit for recovery of possession. As rightly contended by the learned counsel appearing for the petitioner the word “due process of law” does not mean that possession has to be recovered by filing a separate suit. Therefore, the order passed by the executing Court dismissing the E.P., is wholly erroneous and is liable to be set aside in this revision.

7. Accordingly, the civil revision petition is allowed. The order dated 11-6-2013 in E.A.No.81 of 2013 in E.P.No.85 of 2012 in O.S.No.51 of 1991 passed by the Additional Senior Civil Judge, Eluru is set aside and the execution petition is ordered to be restored to file.

The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

R.KANTHA RAO, J.

01st June, 2015.

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HON'BLE SRI JUSTICE R.KANTHA RAO

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