

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+C.R.P.No.3435 of 2014

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% 9-3-2015

Smt.Sarverunnisa Begum

Petitioner

Vs.

\$ Syed Rafeeq

Respondents

! Counsel for the Petitioner: Sri D.V.N.Acharya

Counsel for the Respondent : Sri Nimmagadda Satyanarayana

< Gist:

> Head Note:

? Cases referred:

1. (2001) 7 SCC 698
2. AIR 2014 Cal 230
3. 2012 Law Suit (Mad) 2317
4. AIR 2001 SC 2984
5. 2014 Law Suit (SC) 45
6. AIR 2014 SC 1400
7. AIR 1982 SC 818
8. 2012(3) ALD 682
9. 2007(1) APLJ 186 (HC)
10. 2011(3) ALD 577
11. 1999(5) ALT 499
12. AIR 1973 Mysore 131
13. AIR 1954 ALL 643
14. AIR 1985 BOM 412
15. AIR 1983 CAL 51
16. AIR 1974 MAD 289
17. AIR 1977 ALL 156
18. AIR 1978 KER 236

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ORDER:

1. Judgment debtor in E.P.No.10 of 2011 in O.S.No.9 of 2009 on the file of the Court of the I Additional District Judge, Karimnagar is the petitioner in the present revision filed under Section 115 of the Code of Civil Procedure. In the present revision, challenge is to the order dated 9.7.2014 passed by the said Court, directing delivery of the schedule property covered by the suit agreement of sale.

The facts and circumstances, leading to the filing of the present revision are as infra:

2. Respondent herein instituted O.S.No.9 of 2009 against the petitioner on the file of the Court of the I Additional District Judge, Karimnagar for specific performance of Agreement of Sale dated 12.11.2007. The learned Judge decreed the suit on 29.4.2011. Thereafter the decree holder/respondent filed E.P.No.10 of 2011 for execution of sale deed and delivery of possession. The Court below executed registered sale deed on 18.3.2012. In the said execution proceedings, respondent herein filed E.A.No.1 of 2013 for delivery of the subject property. Judgment debtor/petitioner herein filed a counter affidavit, resisting the said application. The learned Judge, by way of an order dated 9.7.2014, allowed the said application and directed the bailiff to deliver the possession of the subject property.

3. Calling in question the validity and the legal sustainability of the said order dated 9.7.2014, the present revision has been filed under Section 115 of the Code of Civil Procedure.

4. Heard Sri D.V.N.Acharya, learned counsel for the petitioner and Sri Nimmagadda Satyanarayana, learned counsel for the respondent apart from perusing the material available on record.

5. Contentions/submissions of the learned counsel for the petitioner:

(1) The order impugned in the present revision is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Specific Relief Act, 1963.

of, as such, the Court below erred in ordering delivery of property.

(4) Since there is no decree granted by the original Court, the executing Court grossly erred in ordering delivery of property in execution and it is a settled law that the executing Court cannot travel beyond the decree.

(5) The reasons assigned by the Court below in the order under revision are not in conformity with the ratio laid down in various authoritative pronouncements.

To bolster his submissions and contentions the learned counsel for the petitioner places reliance on the following judgments:

(i) **Adcon Electronics Pvt. Ltd., v. Daulat and another**

(ii) **Gloster Limited v. Bowreah Jute Mills Private Limited and other.**

iii. **Durisamy and others v. V.P.Periyasamy Gounder and others.**

iv. **Anwar Hasan Khan v. Mohammed Shafi and others**

v. **Dipak Babaria and another v. State of Gujarat and others**

vi. **Hardeep Singh v. State of Punjab and others**

6. Contentions/submissions of the learned counsel for the respondent:

(1) The order under revision is in accordance with law and there is no illegality nor any material infirmity in the impugned order and in the absence of the same present CRP is liable to be dismissed.

- ii. **Mr.Nakshtrapum Venkateswarlu v. Smt. Bathula Ankamma and others**
- iii. **Smt.Suluguru Vijaya and others v. Pulumati Manjula.**
- iv. **Kalivarapu Lakshmi Kumari v. Burada Appalanaidu**
- v. **V.Narasimha Chary v. P.Radha Bai and others**
- vi. **Mohammed Ali Abdul Chanimomin v. Bisahemi Kom Abdulla Saheb Momin and another**
- vii. **Balmukund v. Veer Chand**
- viii. **Lotu Bandu Sonavane v. Pundalik Nimba Koli**
- ix. **Debabrata Tarafder v. Biraj Mohan Bardhan**
- x. **S.S.Rajabathar v. N.A. Sayeed**
- xi. **Gyasa v. Smt.Risalo**
- xii. **Narayana Pillai Krishna Pillai v. Ponnuswami Chettiar Subbalekshmi Ammal**

7. In above back ground now the issues, which this Court is called upon to answer in the present revision are;

(1) Whether the learned Additional District Judge is justified in ordering delivery of the schedule property covered by the suit agreement of sale dt.12-11-2007 ?

(2) Whether the order impugned is vitiated in view of the provisions of Section 22 of the Specific Relief Act ?

(3) Whether the order under revision is in accordance with the provisions of Section 55 of the Transfer of Property Act, 1882 ?

8. The provisions of law which are germane and relevant for the purpose of resolving the issues in the present revision are Sections 22 and 28 of the Specific Relief Act, 1963 and Sections

