

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**CIVIL REVISION PETITION No.4764 of 2015**

**ORDER:**

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This Revision is filed against the order dated 12-10-2015 in E.A.No.141 of 2015 in E.P.No.14 of 2015 in O.S.No.50 of 2006 on the file of Senior Civil Judge's Court, Adoni, Kurnool District, wherein the Court below dismissed the application filed by the petitioner for staying the execution proceedings in the E.P.

It is stated that the E.P. No.14 of 2015 was filed for delivery of petition schedule property allotted to the petitioner under final decree in O.S.No.50 of 2006.

Learned counsel for the petitioner submits that though the petitioner and the respondents 3 to 6 are the daughters of 2<sup>nd</sup> respondent and sisters of 1<sup>st</sup> respondent, without making them as parties, the 1<sup>st</sup> respondent filed suit O.S.No.50 of 2006 for partition of the properties and the same was decreed and that the 1<sup>st</sup> respondent has filed an application in I.A.No.577 of 2010 for passing of final decree in O.S.No.50 of 2006. The said I.A. was disposed of and allotment of the properties will be subject to the result of O.S.No.132 of 2011, filed by the petitioner herein. Once the order is

passed in I.A.No.577 of 2010, both E.P.No.14 of 2015 and O.S.No.132 of 2011 should have been tried together. But the Court below passed final decree subject to the result of O.S.No.132 of 2011, instead of staying E.P.No.14 of 2015 and

dismissed the application.

On the other hand, learned counsel appearing for the respondents 1 to 6 submits when the possession is delivered nothing survives in the E.P. and the application of the petitioner in E.A.No.141 of 2015 becomes infructuous, and the trial Court rightly dismissed the application.

In this case, a perusal of the impugned order goes to show that as per Amin's report, it is found that the possession was delivered to the 1<sup>st</sup> respondent on 22-02-2015 and E.A.No.141 of 2015 was filed on 06-03-2015. It goes to show that the delivery of the possession is not recorded and that still the E.P. is pending. Until the delivery of possession is recorded, it cannot be said that the E.P. is finally disposed of. In view of the same, I am of the opinion that the E.P.14 of 2015 and O.S.No.132 of 2011 can be tried together.

Accordingly, the Civil Revision Petition is disposed of and the impugned order dated 12-10-2015 is set aside and the trial Court is directed to try both E.P.No.14 of 2015 and O.S.No.132 of 2011 together and the rights of the parties shall be worked out accordingly. However, this will not affect the delivery of possession granted by Amin, which will be subject to the final orders in the said proceedings.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

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**A.RAJASHEKER REDDY,J**

01-12-2015

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