

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

C.R.P.Nos.2100 & 2112 of 2015

COMMON ORDER:

These Revision Petitions are filed challenging the orders dt.16-04-2015 in E.A.No.27 of 2015 and 28 of 2015 in E.P.No.330 of 2014 in O.S.N.1238 of 1996 of the I Additional Senior Civil Judge, Warangal.

2. Petitioners herein are J.Drs. in the suit filed by one Syeda Afsar Quadri for partition of the properties mentioned in the schedule to the plaint and for other reliefs. The suit was decreed on 21-09-2001 by the VII Senior Civil Judge; City Civil Courts, Hyderabad, on the basis of Ex.B-7 and the parties were directed to partition the A schedule properties as per its terms. The said preliminary decree of the trial Court was challenged in an appeal, but the said appeal is also said to have been dismissed.
3. I.A.No.1209 of 2002 was filed by the respondent herein (who was 2nd defendant in the suit) under Order 20 Rule 18 to pass a final decree pursuant to the preliminary decree dt.29-01-2001 in the suit.
4. An advocate commissioner was appointed by the Court and he filed a report. Basing on the report, final decree was passed on 19-10-2011 and certain properties were allotted to the plaintiff as well as to defendant Nos.1 and 2 which were marked in red, yellow and green colour in the plans annexed to the final decree.
5. One of the properties allotted to respondent (who was 2nd defendant) by the final decree was a property bearing H.No.24-3-3.

6. To execute the said decree, the respondent filed E.P.No.330 of 2014 and recover possession of the said property. The said E.P. was posted to 24-09-2015 originally.
7. Thereafter, E.A.No.27 of 2015 was filed by the respondent to advance the hearing of the E.P. Another E.A.No.28 of 2015 was also filed by the respondent seeking police aid to enable him to get possession of the house No.24-3-3 allotted to him in the final decree.
8. Notice of these applications was given to the petitioners.
9. No counter was filed to these applications by the petitioners.
10. Therefore, by separate orders dt.16-04-2015, both these applications were allowed.
11. Questioning these orders, these Revision Petitions are filed.
12. Learned counsel for the petitioners contends that the premises H.No.24-3-3, in respect of the E.P. was filed, was not one of the properties mentioned in the plaint schedule by the plaintiff originally and therefore there cannot be partition of the said property and delivery of its possession to the respondent. She further submits that notice in the E.As. was served on 2nd of April 2015 on the petitioners, but petitioners' counsel could not appear in the Court as he was busy elsewhere and therefore the Court below erroneously allowed the said E.As.
13. It is no doubt true that premises H.No.24-3-3, in respect of which the E.P.No.330 of 2014 was filed by the respondents, is not one of the properties mentioned in the plaint filed by the

plaintiff originally. However, the suit was decreed admittedly on the basis of Ex.B-7 and it is not disputed that this property was allotted to the respondent in Ex.B-7. Since practically the division of immovable properties in the suit was done on the basis of Ex.B-7 document, there is nothing wrong in the trial Court directing partition of house

No.24-3-3 also, and on the ground that this item was not included in the original plaint schedule, preliminary decree of the trial Court or final decree of the trial Court cannot be found fault with. In any event, the appeal against the preliminary decree was admittedly dismissed and no appeal against the final decree has been preferred by the petitioners.

14. It is therefore not open to the petitioners to contend that the decree for delivery of possession of this particular item is erroneous because the executing Court cannot go behind the decree. Admittedly notice in both E.A.Nos.27 and 28 of 2015 was served on the learned counsel for the petitioners on 02-04-2015 and only 14 days later, the impugned orders are passed. Nothing prevented the petitioners from filing counters in the E.As., but they choose not to do so and conveniently blamed the advocate for their inaction. Since the said item as can be seen from the final decree, appears to have been allotted to the respondent, the petitioners cannot squat in the said item in spite of having suffered the final decree in the suit wherein that particular item was allotted to the respondent.

15. Therefore, I do not find any error in the orders passed by the Court below in not only in advancing the E.P. from 29-04-2015 to 16-04-2015, but also in granting police aid for execution of the same and for delivery of the possession of the said property to

the respondent.

16. Therefore, both the Civil Revision Petitions fail and the same are accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2015

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