

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.3379 of 2015

ORDER:

_____ This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 is filed by the judgment-debtors in O.S.No.912 of 2008 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad, aggrieved by the order dated 17.08.2015 passed in E.A. (Sr.) No.3955 of 2015 in E.P.No.159 of 2012 in O.S.No.912 of 2008.

2. _____ The respondent herein is the plaintiff in the aforesaid suit, which is filed against the petitioners herein, who are defendants in the suit, for their eviction, arrears of rent and mesne profits. It is the case of the respondent-plaintiff that he is the absolute owner and landlord of the premises bearing Municipal No.8-2-686/49/D/2/2/D, situated at Road No.12, Banjara Hills, Hyderabad. The said premises is a building with a built-up area of 1900 Sq. feet with land admeasuring 240 Sq. yards besides servant quarter. It is the case of the respondent-plaintiff that the said building was given on rent to the petitioners herein for a monthly rent of Rs.14,000/- from 01.02.2005 to 31.11.2005, which was continued and rent was enhanced nominally till 31.10.2007 and petitioners herein were paying rent at the rate of Rs.17,825/- per month. Pleading that in spite of his demand for vacating the schedule premises, petitioners

have not vacated the same, the suit has been filed, claiming relief of eviction, arrears of rent and mesne profits.

3. Petitioners have contested the suit by filing written statement, wherein they admitted that the respondent herein is the owner of the premises besides admitting the rental agreement. They pleaded that they have been paying rents regularly and no demand was made by the respondent herein for vacating the premises.

4. In the suit, the respondent herein was examined as P.W.1 and Exs.A.1 to A.6 were marked on his behalf. On behalf of the petitioners herein, 1st petitioner was examined as D.W.1 and Ex.B.1 – rental receipts were filed. The suit was decreed vide judgment and decree dated 30.03.2011, confirmed in appeal and further confirmed by the Hon'ble Supreme Court. To execute the decree, when E.P.No.159 of 2012 was filed, a claim petition was filed by a third party claiming independent right in the E.P. schedule property, claiming that the respondent-decree holder lost his title by virtue of the decree in A.S.No.16 of 2008 dated 24.09.2008. The petitioners herein participated in the enquiry in the claim petition and did not choose to cross-examine the respondent-decree holder and only after disposal of the said claim petition, they filed E.A., under Section 47 CPC seeking declaration to the effect that the decree obtained

by the respondent-decree holder in O.S.No.912 of 2008 dated 30.03.2011 cannot be executed on them.

5. Mainly it is the case of the petitioners that the respondent-decree holder lost title by virtue of the decree passed in A.S.No.16 of 2008 dated 24.09.2008 and the power of attorney holder of the vendor has died before execution of sale deed in favour of the respondent-decree holder; as the respondent-decree holder is claiming title under the sale deed executed by a dead person, such decree, as it is obtained by fraud, cannot be executed on the petitioners. The said E.A., is dismissed by the impugned order. Hence, the present Civil Revision Petition.

6. Heard Sri A. Sudarshan Reddy, learned senior counsel assisted by Sri G. Madhusudhan Reddy, learned counsel on record for the petitioners and Sri J. Prabhakar, learned counsel for the respondent.

7. It is contended by the learned senior counsel appearing for the petitioners that the respondent herein had no valid title over the suit schedule property as much as the vendor of the power of attorney holder was no more on the date when the sale deed was executed; decree is obtained by the respondent by playing fraud, as such, the same cannot be executed on the petitioners. In support thereof, he relied on the decision of the Hon'ble Supreme Court in

M/s. Devidayal Rolling Mills, Petitioner v. Prakash Chiman

Lal Parikh and others, Respondents ^[1].

8. On the other hand, it is contended by the learned counsel for the respondent that petitioners were inducted as tenants by the respondent-decree holder and at no point time of time they have disputed the title of the respondent; in fact, in the written statement filed in O.S.No.912 of 2008, while admitting that the respondent is the landlord of the premises in question, they specifically admitted the execution of rental deed for a period of 11 months; therefore it is not open for the petitioners to dispute the title of the respondent-decree holder at this point of time so as to claim relief in an application filed under Section 47 CPC.

9. Having heard the learned counsel for the parties, I have perused the judgment in O.S.No.912 of 2008, the order passed in E.A.No.115 of 2013 and the impugned order passed in E.A.(Sr.) No.3955 of 2015. The respondent-decree holder filed suit for eviction, arrears of rent and mesne profits. It is his specific case that he is the landlord of the suit schedule property and the same was let out to the petitioners herein on monthly rent of Rs.14,000/- from 01.02.2005 to 31.11.2005. It is alleged that said tenancy is continued and the 1st petitioner was paying monthly rent of Rs.17,825/- at the time of filing of suit. The petitioners herein had never disputed the title of

the respondent herein in the suit. In fact, they have agreed that they are the tenants and contested the suit mainly on the ground that there was no demand for vacating the premises and they have not defaulted in paying rents. After full-fledged trial, the suit was decreed as early as on 30.03.2011 and to execute the same, when E.P.No.159 of 2012 was filed, third parties have filed claim petition under Order 21 Rules 97 to 101 CPC, by setting up independent title to the suit schedule property. After giving opportunity, the said claim petition was dismissed by order dated 06.08.2015. The petitioners were parties to the said E.A., but even in the said proceedings, they have not participated in the enquiry and have not chosen to examine the respondent-decree holder. The said E.A., was dismissed by order dated 06.08.2015 and thereafter E.A. (Sr.) No.3955 of 2015 is filed under Section 47 CPC stating that the decree obtained in O.S.No.912 of 2008 dated 30.03.2011 is not executable as much as the respondent-decree holder had lost title to the property on 24.09.2008, i.e. the date of judgment in A.S.No.16 of 2008. In the order passed in E.A.No.115 of 2013, there is no finding that there was fraud on the part of the respondent. Having secured the premises in question on rent from the respondent, it is not open to the petitioners to dispute the title of the respondent-decree holder at this point of time. Having participated in the proceedings, petitioners never disputed the title of the respondent-

decree holder and not even in the claim petition filed by third parties. Though they were parties, they have not participated in the enquiry and never disputed the title of the respondent-decree holder. Having regard to the stand of the petitioners in O.S.No.912 of 2008 and also having regard to the findings recorded in E.A.No.115 of 2013, it is not open to the petitioners to dispute the title of the respondent-decree holder at this point of time by way of application under Section 47 CPC. It is a case where, though the respondent-decree holder has succeeded in the suit by obtaining decree which is ultimately confirmed by the Hon'ble Supreme Court, petitioners are not allowing execution of decree and protracting the litigation by raising untenable grounds. As such, I am of the view that E.A. (Sr.) No.3955 of 2015 which is filed by the petitioners herein is nothing but gross abuse of process of law and they have not made out any case under Section 47 CPC so as to seek declaration that decree in O.S.No.912 of 2008 cannot be executed. Having regard to the facts and circumstances of the case on hand, the decision of the Hon'ble Supreme Court referred to supra, which is relied on by the learned senior counsel appearing for the petitioners, would not render any assistance in support of the case of the petitioners.

10. The Civil Revision Petition is devoid of merits and is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending
in the C.R.P., stand closed.

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R. SUBHASH REDDY, J

28th August, 2015
MRR

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