

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

C.M.A. No. 771 of 2015

Order:

This CMA is directed against the orders, dated 17.07.2015, passed in EA No.40 of 2015 in EP No.330 of 2014 in OS No.1238 of 1996, by the learned I Additional Senior Civil Judge, Warangal, whereby and whereunder the learned Judge has dismissed the application filed by the appellants/JDR Nos. 5 and 7, under Order 21 Rule 106 read with Section 151 CPC, to set aside the *ex parte* order, dated 21.10.2014, passed against them and permit them to contest the above EP.

2. Learned counsel for the appellants submits that without giving any notice to the appellants herein, the EP was advanced to 21.10.2014 from 18.12.2014 and, on that day, they were set *ex parte*. It is also submitted that the EP is filed in respect of the house which is not mentioned in the decree and, therefore, the *ex parte* order, dated 21.10.2014, passed in the EP is liable to be set aside and the appellants may be permitted to contest the EP.

3. A perusal of the impugned order goes to show that in the EP, warrant of delivery of possession was issued on 22.12.2014 initially and, later, fresh delivery warrant was issued on 20.04.2015. When the Field Assistant of the Court went to execute warrant he found lock to the gate and a petition was filed in EA No.70 of 2015 to break open the lock. Further, EA Nos.27 and 28 of 2015 were allowed by the executing Court on 16.04.2015 after hearing the appellants herein, against which the appellants herein preferred CRP Nos.2100 and 2112 of 2015 and the same were dismissed by this Court at the admission stage, by an order, dated 10.06.2015, confirming the order of the executing Court granting police aid for execution of warrant and for delivery of possession of the property. Based on the same, the trial Court dismissed the application.

4. When the orders of grant of police protection and warrant of delivery of possession were passed in EA Nos.27 and 28 of 2015, after hearing the appellants herein, and when the said orders were confirmed by this Court in CRP Nos.2100 and 2112 of 2015, it is not open for the appellants now to contend that without giving any notice to them they were set *ex parte*. The Court below, while relying on the orders passed by this Court in CRP Nos.2100 and 2112 of 2015, dismissed the application and I do not see any error in the impugned orders passed by the Court below warranting interference of this Court. The CMA is devoid of merit and the same is liable to be dismissed.

5. Accordingly, the CMA is dismissed. There shall be no order as to costs.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in this CMA shall stand closed.

A. RAJASHEKER REDDY, J.

Date: 18.11.2015

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