

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

**CRP. No.3807 of 2014**

**ORDER:**

This Civil Revision Petition is filed challenging the order dt.08.10.2014 in EA.No.724 of 2014 in EA.No.139 of 2013 in EP.No.726 of 2005 in O.S.No.56 of 1990 of the I Additional Junior Civil Judge, Eluru.

2. The respondent herein filed the above suit against the petitioners for recovery of possession of a vacant site. The said suit was decreed and the appeal AS.No.227 of 2006 filed by the petitioners against the said decree was dismissed on 22.06.2012.

3. The respondent filed E.P.No.726 of 2005 for execution of the decree by way of delivery of possession of the EP schedule property. On 13.08.2012, the I Additional Junior Civil Judge at Eluru passed orders for delivery of the suit property and also granted police aid.

4. The petitioners allege that under the guise of executing the said delivery warrant, the court amin, in collusion with the respondent and the police, demolished a wall in between the petitioners' bathrooms and compound wall of others and also a compound wall belonging to northern side people and entered into the EP schedule property and this was done in spite of the objections raised by the petitioners.

5. The petitioners therefore filed EA.No.139 of 2013 seeking redelivery of the EP schedule property to them and to make enquiry into the conduct of the court amin.

6. In the said EA, the petitioners also filed EA.No.724 of 2014 under Order XXVI Rule 9 CPC to appoint an Advocate-Commissioner for

the purpose of making local inspection, in order to observe, (i) whether there was a bathroom and lavatory in the EP schedule property and (ii) whether there are traces of demolition of the wall situated in between the bathrooms and others compound wall situated on the north-west of the petitioners and on the north-east of the EP schedule property. They contended that this is necessitated because the court amin had denied about the demolition of the wall at the time of execution of delivery warrant.

7. Counter affidavit was filed by the respondent opposing the said application and contending that the said application was not maintainable. He contended that EP schedule property was delivered to the respondent on 07.09.2012 by the court amin and at the stage of recording delivery proceedings, the petitioners had filed EA.No.139 of 2012 vexatiously to drag on the matter and to further squat on the property. It was also contended that in the affidavit filed in support of EA.No.139 of 2013, there was no mention that there was a bathroom and lavatory as alleged in EA.No.724 of 2014 and this was also not stated in the evidence of 1<sup>st</sup> petitioner as PW1 or in the evidence of the other witnesses examined on behalf of the petitioners. He also contended that the walls which had been constructed long time back were age old constructions and they had fallen long time back and there had been no necessity to pull them down by using crowbars, as alleged by the petitioners. He referred to the statement of the court amin that he had not demolished any walls as alleged by the petitioners and that there were no structures in the site. It was also pointed out that after long lapse of two years, it will be very difficult to identify or assess whether the structures were pulled down by the court amin at the time of execution of delivery warrant in collusion with the respondent or whether they had fallen down long time back. Further, the allegation made by the petitioners that the court amin, at the instigation of the respondent, with the aid of police demolished walls, was denied.

8. By order dt.08.10.2014, the Court below dismissed the said application. It held that the court amin had denied about the existence of bathroom and lavatory in the EP schedule property and that while filing EA.No.139 of 2013 also, the petitioners had not taken such a plea.

9. A reading of the affidavit filed in support of EA.No.139 of 2013 indicates that the petitioners did plead that the Decree Holder stated that they would demolish the wall in between the petitioners' bathroom and compound wall of others and also the compound wall which belongs to the northern side people in order to enter into the EP schedule property. According to the said affidavit, the petitioners had replied that they would have no objection if the Decree Holder/respondent takes possession without demolishing the said wall, but without caring for the petitioners' statement, the respondent instigated the court amin to demolish the wall and also demolish another compound wall of the Judgment Debtor.

10. In essence, the contention of the petitioners appears to be that although the EP schedule property is a vacant site, access to the said property is not available for the respondent unless a wall in between the petitioners' bathrooms and compound wall of others/northern side people, is removed; that even though there was no permission to the court amin to undertake any demolition, he demolished compound wall on the northern side of the petitioners' bath room and the compound wall of the northern side people.

11. If this allegation is true, then it is a case of excessive execution by the court amin at the instance of the respondent.

12. In any event, it would be difficult for the Court to decide the issue, unless an Advocate-Commissioner is appointed and he visits the EP

schedule property and notes down whether there are any traces of demolition of wall in between the bathrooms of the petitioners or of demolition of compound wall situated on the north-west of the petitioners, which is to the north-east of the EP schedule property. Therefore, the Court below is not correct in dismissing the EA.No.724 of 2014.

13. So, this Civil Revision Petition is allowed. The order dt.08.10.2014 in EA.No.724 of 2014 in EA.No.139 of 2013 in EP.No.726 of 2005 in O.S.No.56 of 1990 of the I Additional Junior Civil Judge, Eluru is set aside and the said application is allowed. There shall be no order as to costs.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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**M.S.RAMACHANDRA RAO, J**

28<sup>th</sup> October, 2015

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