

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

C.R.P.No.3465 of 2014

ORDER:

Heard Sri G.Vijaya Babu, learned counsel for the petitioners and Sri Yallabandi Ramatirtha, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.04-09-2014 in E.A.No.256 of 2012 in E.A.No.191 of 2012 in E.P.No.62 of 2006 in O.S.No.59 of 2001 of the Additional Senior Civil Judge, Krishna District at Machilipatnam.

3. Petitioners herein are J.Drs. in the above suit which had been filed by the respondent for specific performance of an agreement of sale and which had been decreed on 01-03-2005. The petitioners herein had remained *ex parte* in the suit and did not contest it on merits.

4. Thereafter, E.P.No.62 of 2006 was filed for execution of the decree and registered sale deed was executed in favour of the respondent on 19-03-2012. Thereafter, E.A.No.191 of 2012 was filed for delivery of the possession of the properties which are subject matter of the sale deed.

5. In the counter affidavit filed to the said

application, an objection was raised by the petitioners that the suit schedule property was not within the territorial jurisdiction of the Court of Senior Civil Judge, Machilipatnam, which had decreed the suit and also executed the sale deed in favour of the respondent and as such its decree is nullity and *void abinitio*.

6. Petitioners also filed E.A.No.256 of 2012 under Section 47 CPC contending that the Additional Senior Civil Judge, Machilipatnam had no power to execute the decree as the Court which passed the decree had no territorial jurisdiction. Petitioners thus questioned the very maintainability of the decree, its execution and jurisdiction to order delivery of the schedule property.

7. By order dt.04-09-2014, the said application was dismissed. The Court below relied upon the decision of the Supreme Court in **Hira Lal Vs. Kali Nath**^[1], wherein the Supreme Court held that an objection as to local jurisdiction or territorial jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case, which goes to the very root of the jurisdiction. Similar view was also expressed in **Bahrein Petroleum Co. Ltd. Vs. P.J.Pappu**^[2], wherein the Court held that it is open for the respondent to waive the objection regarding territorial jurisdiction, and if it was done either expressly or impliedly, he cannot raise it at any subsequent stage. It therefore

held that the decree in question was not a nullity and that the petitioners, not having raised this plea in the Written Statement filed in the suit by them or in the E.P., are deemed to have waived it.

8. Challenging the same, this Revision Petition is filed.

9. Although the learned counsel for the petitioners sought to contend that the order passed by the Court below is correct and warrants interference by this Court under Article 227 of the Constitution of India, I am unable to agree with the said submission. As rightly held by the trial Court relying on **Hira Lal** (1 supra) and **Bahrein Petroleum Co. Ltd.** (2 supra), an objection as to competency of a Court to try a case goes to the very root of the jurisdiction but an objection as to territorial jurisdiction does not stand on the same footing. It can be waived either expressly or impliedly and if it has been so waived, it cannot be raised subsequently.

10. It is not disputed that the petitioners, who are defendants in the suit, had filed a Written Statement but had not raised any objection as to the territorial jurisdiction of the Court which decided the suit.

11. Therefore, they are deemed to have waived the said objection and cannot be allowed to raise the same at the stage of execution.

12. Therefore, I do not find any merit in the Revision Petition and the same is accordingly dismissed.
No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-09-2015

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[\[1\]](#) AIR 1962 S.C. 199

[\[2\]](#) AIR 1966 S.C. 634