

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No. 4443 OF 2015

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ORDER :

This Civil Revision Petition is filed by the judgment debtors challenging the order of the Court below dated 21.09.2015 in E.A.No.109 of 2008 in E.P.No.10 of 2005 in O.S.No.17 of 1997, wherein the Court below has directed the Court Amin to deliver the petition schedule property to the respondents/decreed holders/auction purchasers as per the Commissioner Report.

2. Learned counsel for the petitioners submits that the Court below without reference to the suit schedule property, has directed the Court Amin to deliver the petition schedule property as per the Advocate Commissioner's report. He would contend that the boundaries mentioned by the Advocate Commissioner are not tallying with the suit schedule boundaries given in the plaint. He would further contend that without filing an application for amendment, the Executing Court cannot imply the boundaries in the suit schedule property, which is not permissible under law. He also submits that the Executing Court cannot travel beyond the decree at the time of execution of decree. In support of his contention, he relied on the judgments reported in **Yempalla Ramaiah v. Pallamparthi Krishna Reddy and others**^[1], **Bai Shakriben (dead) by Natwar Melsingh and others v. Special Land Acquisition Officer and another**^[2] and **Deepa Bhargava and another v. Mahesh Bhargava and others**^[3].

3. On the other hand, learned counsel for the respondents-decreed holders submit that when an Advocate Commissioner is appointed for inspection of the suit schedule property, the same was allowed and became final. As such, now the petitioners cannot challenge the impugned order. He also submits that while appointing the Advocate Commissioner, the Court has considered the report of Mandal Surveyor

and basing on the same, the impugned order has been passed. In support of his contention, he relied on the judgment of this Court in **K.Rani v. Hanumaiah Goud and another**^[4].

4. Now, it is to be seen whether the boundaries mentioned in the Execution Petition are tallying with the boundaries mentioned by the Advocate Commissioner in his report or not. The respondents/decreed holders have not filed any application for amendment of the decree.

a) In **Yempalla Ramaiah v. Pallamparthi Krishna Reddy and others** (*supra*), this Court held as follows:

“4. In TIKO case (1 *supra*) relied on by the learned Counsel for respondents it is held:

Technically speaking the executing court could not go beyond the decree and hence the order passed by it is not assailable. But the executing court was also the court which could have amended the plaint and the decree. Counsel for the appellants states that although the decree was passed by Sub-Judge Class III, Sonapat, the very same court later exercised powers as Sub-Judge Class I and was executing the decree. It was, therefore, open to that court to treat the application as an application made before the decretal court and proceed to dispose of the same in accordance with law.

In Pratibha Singh case (2 *supra*) it is held:

When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, it would be more appropriate to invoke Section 47 CPC.”

b) In **Bai Shakriben (dead) by Natwar Melsingh and others v. Special Land Acquisition Officer and another** (*supra*), the Hon’ble Supreme Court held as follows:

6.We feel that the executing Court cannot go behind the decree. It would have been appropriate for the claimants to have gone in appeal and have the matter corrected, but unfortunately they did claim of

the appellate remedy and approved the decree to become final. The omission to award additional amounts under [section 23\(1-A\)](#), enhanced interest under [section 28](#) and solatium under [Section 23\(2\)](#) are not clerical or arithmetical mistake crept in the award passed by the reference Court but amounts to non-award. under those circumstances, the reference Court was clearly in error in entertaining the application for amendment of the decree and is devoid of power and jurisdiction to award the amounts under [Sections 23\(2\)](#), [23\(1-A\)](#) and 28 of the Act.”

c) In **Deepa Bhargava and another v. Mahesh Bhargava and others** (*supra*), the Hon’ble Supreme Court held as follows:

“9.....

An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of [Section 74](#) of the Indian Contract Act.”

It is well settled principle of law that the Executing Court cannot travel beyond the decree and grant relief. However, the learned counsel for the respondents state that mistake has crept in the decree. In view of above referred decisions, the respondents can be permitted to file an application for amendment of the decree seeking correction of the suit schedule boundaries, in accordance with law.

In view of above facts and circumstances, without expressing any opinion on the merits of the case, the impugned order is set aside and the EP can be proceeded after the respondents makes necessary application for amendment of the decree and the same is decided, in accordance with law.

Accordingly, the Civil Revision Petition is allowed to the extent indicated above. No costs. As a sequel thereto, miscellaneous petitions, if any, pending in this CRP shall stand closed.

A.RAJASHEKER REDDY, J

11.12.2015

Note: Issue CC by two days.

B/o. kvs

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kvs

[1] 2007 (1) ALD 367
[2] (1996) 4 Supreme Court Cases 533
[3] (2009) 2 Supreme Court Cases 294
[4] 2014 Lawsuit (Hyd) 445