

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**CIVIL REVISION PETITION NO.2245 OF 2015
AND
CRPMP Nos.3121 AND 3306 OF 2015**

Between:

A.G.V.V.N.Satyanarayana

... Petitioner

a n d

Challa Dhanalakshmi and another

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 21st JULY, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordship wish to
see the fair copy of the judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2245 OF 2015

AND

CRPMP Nos.3121 AND 3306 OF 2015

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ORDER

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This revision petition arises out of the order dated 06.04.2015 passed by the learned I Additional Junior Civil Judge, Tanuku, in E.A.No.310 of 2014 in E.P.No.13 of 2012 in O.S.No.79 of 1996. The said EA was filed by the petitioner herein, being the first judgment debtor, under Order 16 Rules 1 and 7 CPC for summoning the Commissioner, Tanuku Municipality, or the concerned officer of Tanuku Municipality to give evidence as to the construction of the municipal cement drain in the place of the old drain by the Municipality near the EP schedule property and widening of the road at the place, along with the concerned record. By the order under revision, the executing Court dismissed the E.A. Hence, this revision under Article 227 of the Constitution.

The suit, O.S.No.79 of 1996, was filed for recovery of possession and was decreed in part on 11.08.2006. However, the plea of the petitioner/first judgment debtor was that the EP schedule property, which was to be delivered pursuant to the aforestated decree, was not in existence as it had collapsed during the process of construction of cement drain and road widening taken up near the EP schedule property by Tanuku Municipality. He also claimed that he addressed representation dated 26.12.2011 to the Municipality in connection with the loss suffered by him and that proceedings were pending before this Court in that regard. The petitioner/first judgment debtor therefore

sought to summon the Commissioner of Tanuku Municipality or the officer concerned to give evidence as to the drain construction and road widening work undertaken by the Municipality.

The first respondent/decree holder however asserted that the EP schedule property was in existence as on the date of filing of the EP and the same was demolished thereafter by the petitioner/first judgment debtor only to avoid delivery. She further stated that the alleged representation dated 26.12.2011 was not found in the record and contended that the drain was constructed only in the place of the old drain and that the EP schedule property, being a shop room and a tiled house, was demolished by the petitioner/first judgment debtor only to avoid delivery.

The executing Court held against the petitioner/first judgment debtor on the ground that the alleged representation dated 26.12.2011 was not produced before it and no mention had been made as to any proceedings pending before the High Court in that regard. The executing Court observed that it was open to the petitioner/first judgment debtor to adduce evidence before it in terms of the liberty granted by this Court in the Second Appeals but the vague plea as to the alleged representation dated 26.12.2011 could not be acted upon when there was no material to support the same. The executing Court also observed that summoning the Commissioner of the Municipality or any other officer thereof would be necessary only when some convincing material was placed before the Court and that the photographs filed by the petitioner/first judgment debtor were insufficient to draw an inference in his favour. The executing Court therefore held that summoning the Commissioner, Tanuku Municipality, was not warranted at the given stage and dismissed the EA.

Heard Sri M.V.Durga Prasad, learned counsel for the petitioner/first judgment debtor, and Sri MRS Srinivas, learned counsel on caveat for the first respondent/decree holder.

Sri M.V.Durga Prasad, learned counsel, pointed out that this

Court, while dismissing Second Appeal No.1156 of 2012 arising out of the subject suit, O.S.No.79 of 1996, by common judgment dated 29.11.2012, permitted his client to take all available pleas, including the plea that the suit schedule building was demolished by the municipal authorities during road widening in that area. Learned counsel would therefore contend that the executing Court ought to have been liberal in permitting the petitioner/first judgment debtor to establish his plea that the EP schedule property had collapsed during the drainage construction and road widening work undertaken by Tanuku Municipality. He asserted that mere failure on the part of his client to produce the representation dated 26.12.2011 addressed by him to the Municipality ought not to have weighed with the executing Court to the extent of disallowing his plea.

Per contra, Sri MRS Srinivas, learned counsel, contended that the petitioner/first judgment debtor was not consistent in his stance as to the collapse of the EP schedule property. He pointed out that at one stage the petitioner/first judgment debtor blamed it on the road widening work and at another, the drainage construction work. He further stated that no useful purpose would be served by summoning a municipal official as it was not the case of the petitioner/first judgment debtor that the Municipality had undertaken demolition of the EP schedule property.

Perusal of the common judgment dated 29.11.2012 passed by this Court in Second Appeal Nos.1030 and 1156 of 2012 reflects that the learned counsel for the appellant, the petitioner/first judgment debtor, filed a petition to receive additional evidence that the suit schedule building was not in existence. This plea was dealt with by this Court as under:

‘4. It is sought to be contended by the appellant’s counsel by filing a petition for receipt of additional evidence to the effect that the building in the schedule premises was demolished by the municipal authorities during road widening in that area. This Court, in this Second Appeal, need not take

into consideration subsequent events which according to the appellant/1st defendant made the decree inexecutable in view of the shop premises being demolished. In case the decree holder approaches the executing court for execution of the decree, then it is open for the judgment debtor to take up any available plea including the present plea before the executing court.'

As this Court recorded that the contention advanced at that stage was that the building had been demolished by the municipal authorities during road widening, which is not the present claim, Sri M.V.Durga Prasad, learned counsel, was permitted to file relevant documents pertaining to the second appeals. Thereupon, CRPMP No.3306 of 2015 was filed by the petitioner/first judgment debtor to receive copies of various documents relating to the second appeals. Perusal of the affidavit filed in support of the petition to receive additional evidence in Second Appeal No.1156 of 2012 reflects that the petitioner/first judgment debtor stated therein that the suit schedule property was affected by the road widening and drainage work undertaken by Tanuku Municipality and that it was not in existence as on that date. He asserted that the suits had become infructuous on that ground. He further stated that the road and drainage work were undertaken by the Municipality after the judgment and decree were passed by the lower appellate Court and therefore, it was necessary to bring on record the photographs thereof as additional evidence.

Significantly, as per this affidavit it was not the case of the petitioner/first judgment debtor that the municipal authorities had undertaken demolition of the suit schedule property. However, in the grounds of appeal filed in Second Appeal No.1156 of 2012, the petitioner/first judgment debtor, at Ground No.16, stated that the suit schedule property was demolished by the municipal authorities while widening the road and undertaking drainage works and asserted that the cause of action for the suit did not survive.

In the affidavit filed in support of E.A.No.310 of 2014 in

E.P.No.13 of 2012, from which the present CRP arises, the petitioner/first judgment debtor stated that the EP schedule property was not available for delivery and explained the reasons therefor as under:

‘ The old tiled roof shops were abutting the old drain. I submit that the Tanuku Municipality has taken up construction of Cement drain work on either side of the Main Road, Tanuku. In the said process the Municipality has dug the old drain to remove the earth with the help of mechanical proclain. In the said process of digging drain the structures abutting the old drain on its South including the EP Schedule property and the remaining tiled house portion was completely damaged and collapsed to the knowledge of everyone including the DHR. As the entire foundation of the tiled house with shop rooms consisting of the EP Schedule shop structure got completely damaged I also sent representation to the Municipality dt. 26-12-2011. At present, the EP Schedule property site is almost occupied by the existing Cement drain. ... ‘

Surprisingly, during the course of arguments, Sri M.V.Durga Prasad, learned counsel, stated that the EP schedule property is now covered by the widened road. This statement is contrary to the plea taken in the affidavit extracted *supra*. It is therefore clear that the petitioner/first judgment debtor has not been consistent in his stand as to how the EP schedule property ceased to exist and as to the present status of the site where the suit property stood.

The first respondent/decree holder also filed CRPMP No.3121 of 2015 in this CRP to receive additional evidence. However, documents which do not form part of the record in the execution petition or the suit cannot be looked into by this Court. The petition is therefore allowed only to the extent of receiving documents which are part of the suit or the execution proceedings.

The cross-examination of the petitioner/first judgment debtor, deposing as R.W.1 in the execution proceedings, was filed by the first respondent /decree holder. Perusal thereof reflects that he stated

therein to the effect that the Tanuku Municipality constructed a drain in his exclusive property though it did not issue any notice to him either at the time of digging the drain or making the construction. He further stated that he got issued a notice to Tanuku Municipality in December, 2011, claiming damages, but admitted that he did not produce any document or copy thereof before the Court. He further stated that he had not initiated any action against Tanuku Municipality and admitted that except the EP schedule property, no other adjacent properties were damaged or had collapsed due to the works undertaken by Tanuku Municipality.

In the light of the aforestated material, this Court finds it difficult to accept the plea of the petitioner/first judgment debtor that examination of any municipal official is warranted at this stage. The changing stands of the petitioner/first judgment debtor apart, his plea before the executing Court in the affidavit filed in support of the subject application was that the EP schedule property had suffered damage and collapsed on its own during the drainage construction and road widening work undertaken by the Municipality. If that be so, the Municipality cannot be presumed to have any record of the same as it was not a case of demolition by the Municipality.

Further, it is not in dispute that the EP schedule property is not in existence as on date. The issue is whether the same has any consequence and that necessarily has to be examined and adjudicated by the executing Court. The attempt on the part of the petitioner/first judgment debtor to summon a municipal official in support of his claim that the non-existence of the EP schedule property is attributable to the Municipality, is therefore of no real import. Further, as rightly pointed out by the executing Court, no material was placed before the said Court to hold in favour of the petitioner/first judgment debtor. The order under revision therefore does not warrant interference on facts or in law.

The civil revision petition is devoid of merit and is accordingly

dismissed. CRPMP No.3306 of 2015 is allowed. CRPMP No.3121 of 2015 is partly allowed to the extent of receiving the additional evidence which already forms part of the record in the suit or in the execution proceedings. Other pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

SANJAY KUMAR,J

21st JULY, 2015

PGS