HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.2728 OF 2015

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India by the petitioners in E.A.Sr.No.198 of 2015 in E.P.No.1 of 2013 in O.S.No.398 of 1998 aggrieved by the order dated 02.07.2015 passed by the IX Additional Senior Civil Judge (FTC) City Civil Court, Hyderabad.

By the aforesaid order, the application filed by the petitioners/judgment-debtors 7 to 10 under Section 47 of CPC is rejected.

Respondents 1 to 5 herein are the decree holders in the aforesaid suit, which is filed for specific performance of the agreement sale and for consequential injunction. The said suit originally filed by the 1st respondent herein was decreed in part and on his death respondents 2 to 5 have come on record.

In the judgment and decree 28.12.2004 passed in the aforesaid suit, defendants 1 to 5, i.e. the respondents 6 to 10 herein, were directed to execute registered sale deed in favour of the

plaintiff-1st respondent herein (deceased) in respect of property bearing Municipal No.17-2-697/1, admeasuring 84.00 Sq. yards, situated at Madannapet, Hyderabad and to put him in physical possession of the property. To execute the decree, respondents-decree holders filed E.P.No.1 of 2013, in which the petitioners herein, who are the legal representatives of the defendant No.6, have filed application under Section 47 of CPC mainly on the ground that house property bearing Municipal No.17-2-697/1 is constructed in an area of 160 Sq. yards and it is a joint family property of all the family members and in the absence of seeking partition, the decree obtained by the respondents-decree holders is not executable. The

said plea is rejected by the Court below.

Heard Sri B. Mohan, learned counsel for the petitioners and
Sri N. Naveen Kumar, learned counsel for the respondents.

It is contended by the learned counsel for the petitioners that inasmuch as suit schedule property is a joint family property which is constructed in a total area of 160 Sq. yards and the same is not divided; in the absence of any partition, the decree obtained by the respondents-decree holders cannot be executed.

On the other hand, it is submitted by the learned counsel for the respondents that the stand of the petitioners runs contrary to the stand of the defendant No.6 and it is not open to raise such question again in execution proceedings by way of application under Section 47 of the Act.

It is to be noticed that the petitioners herein are the legal representatives of the judgment debtor-defendant No.6. In fact defendant No.6, in the suit, has taken a stand that he was in exclusive possession of the suit schedule property, i.e. property bearing Municipal No.17-2-697/1, admeasuring 84.00 Sq. yards, besides other property, i.e. property bearing Municipal No.17-2-697 situated at Madannapet. He had also taken a stand that defendants 1 to 5 relinquished their share for a sum of Rs.1,11,000/-; defendant No.1 received a sum of Rs.65,000/- on 19.04.1995 and there was partition. The petitioners who are the legal representatives of defendant No.6 cannot take a stand that the E.P., cannot be executed in the absence of partition of the suit schedule property. In fact, in the judgment and decree passed in O.S.No.398 of 1998, the Court below has distinguished the property which is sold under Ex.B.4 by mentioning the house bearing No.17-2-697 and the property covered by Ex.A.9 which is the subject matter of the agreement of sale bearing house bearing No.17-2-697/1. In view of the said findings recorded in the judgment and decree and having regard to the stand of defendant No.6, there is absolutely no merit in the I.A., filed by the petitioners under Section 47 of CPC.

For the aforesaid reasons, I am of the view that that there is no merit in this civil revision petition so as to interfere with the impugned order in this petition under Article 227 of the Constitution of India.

Civil revision petition is accordingly dismissed. No order as to costs.

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

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R. SUBHASH REDDY, J

July 17, 2015

MRR