

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

CIVIL REVISION PETITION No.847 of 2014

ORDER:

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This Civil Revision Petition is filed challenging the order dt.18-01-2014 in E.A.No.44 of 2013 in E.P.No.27 of 2009 of the Senior Civil Judge at Zaheerabad.

2. The petitioner herein is Decree Holder in the suit O.S.No.105 of 2003 filed by him for specific performance of an agreement of sale executed by the deceased 1st respondent in his favour on 18-03-2000.

3. On 08-10-2007, the said suit was decreed with costs and direction was given to 1st respondent to execute a regular sale deed within three months after receiving the balance sale consideration.

4. Thereafter E.P.No.27 of 2009 was filed by petitioner to execute a regular sale deed in his favour. The said E.P. was allowed and the Senior Civil Judge, Medak District at Zaheerabad executed a registered sale deed in favour of petitioner in respect of the subject land.

5. The petitioner then filed E.A.No.44 of 2013 stating that he needs to be put in possession of the E.P. schedule property which has been transferred to him under the sale deed.

6. This application was opposed by 2nd respondent on behalf of herself and respondent Nos.3 to 5 by filing counter and a plea was raised therein that an appeal A.S.No.46 of 2007 was filed before the

I Additional District Judge, Medak at Sangareddy against the judgment and decree of the trial Court, that the said appeal is pending and physical possession of the property cannot be delivered on the basis of the sale deed executed on 08-10-2013 by the Court in petitioner's favour. She also claimed that she had let out the suit schedule plot to tenants on monthly basis and one Gulbi Anil Kumar, S/o.Galendrappa is in occupation of the suit plot and paying rents to her.

7. By order dt.18-01-2014, the Court below had dismissed the E.A. declining to give direction to handover possession to petitioner. It held that tenant was not made a party to the suit and no decree was obtained against the tenant. It held that only symbolic possession can be granted and not actual possession and petitioner has to resort to steps for getting possession as contemplated by

law. It further held that the tenant is not bound by the decree since he was not a party to the suit and petitioner cannot insist on delivery of physical possession. It even commented that petitioner has not brought out the true and correct facts while obtaining the decree for specific performance. It held that the conduct of petitioner can be noted in a collateral proceeding as the question in the case and the said relief was never there and spelled out in clear terms in judgment dt.08-10-2007 in the suit and that it had directed only execution of sale deed within three months after receipt of balance sale consideration; and although the petitioner deposited the sale consideration and the Court executed the sale deed, it cannot grant the relief of recovery of possession when it is not contained in the judgment and decree dt.08-10-2007. It even held that since respondents are alleging that it is a fraudulent decree, relief cannot be granted to petitioner.

8. Questioning the same, this Revision is filed.

9. The learned counsel for petitioner Sri Thakur Singh contended that the Court below, which is the executing Court, in an application filed by petitioner for recovery of possession is not entitled to comment upon the decree obtained by petitioner and merely because the respondents alleged the decree to be a fraudulent decree,

it cannot refuse to execute it. He further contended that since the counter affidavit filed by 2nd J.Dr./2nd respondent indicated that tenant was inducted into possession by respondents after the death of 1st respondent and since 1st respondent died after the decree, the decree for specific performance obtained by petitioner entitles the petitioner to evict the tenant, who has been inducted into possession after the decree also since the tenant is also bound by the decree.

He relied upon Section 28(3) (b) of the Specific Relief Act, 1963 and also the judgment of the Supreme Court in

Babu Lal Vs. M/s.Hazari Lal Kishori Lal and others^[1]

and contended that the executing Court is not barred from granting relief of possession; and that even if the relief of possession was not sought for in the plaint, the Court has got the jurisdiction even in execution proceedings to grant such relief. He contended that the petitioner cannot be denied the benefits of the decree when Section 55 of the Transfer of Property Act, 1882 itself authorizes the transferee to get possession in pursuance of a sale deed. He also placed relied on the judgment of this Court in

Nakshatrapu Venkateswarlu Vs. Bathula Ankamma^[2].

10. The learned counsel for respondents Sri N.Praveen

Reddy, on the other hand, contended that the order passed by the Court below is correct and that when the decree did not direct delivery of possession, the petitioner was not entitled to the said relief and he should be made to file a separate suit for recovery of possession by impleading the tenant. He relied upon the judgment of the Supreme Court in **V.Ramaswami Aiyengar and others Vs. T.N.V.Kailasa Thevar**^[3] a n d **Shankar Popat Gaidhani Vs. Hiranjan Umaji More (Dead) by L.Rs. and others**^[4]

11. I have noted the submissions of both sides.

12. In **Babu Lal** (1 supra), decree for specific performance was obtained by plaintiff and a sale deed was executed in favour of respondent Nos.1 to 5 therein by petitioner and respondent Nos.6 to 9. Thereafter Decree-holders applied for execution of the decree. The petitioner filed objections under Section 47 C.P.C. and the High Court modified the order of the Courts below in these proceedings to the effect that the decree-holders shall be entitled to possession also.

A Special Leave to Appeal was sought in the Supreme Court on the ground that the High Court could not grant relief in execution application in excess of and outside the

framework of the prayer by the plaintiff in the original main suit and that the High Court could not have granted the relief of possession. The Supreme Court held that that it may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief of specific performance of the contract of sale. It further held that since neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder, and the right and the title passes to him only on the execution of the deed for sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. It held that limitation would start against the decree-holders only after they obtained a sale in respect of the disputed property. It also referred to Section 28(3) of the Specific Relief Act, 1963 and held that clause (b) of sub-section (3) thereof contemplates the delivery of possession or partition and separate possession of the property on the execution of conveyance by the Execution Court and that sub-section (4) of Section 28 bars the filing of a separate suit for any relief which may be claimed under this Section. It further

held that in a suit instituted by a purchaser against vendor and a subsequent purchaser for specific performance of the contract of sale, if the plaintiff succeeds, the proper form of the decree to be passed is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff.

13. In **V.Narasimha Chary Vs. P.Radha Bai and others**^[5], this Court had held that though the relief of possession is not claimed in the suit and was not granted in the decree, the executing Court can grant relief of possession to the decree-holder in execution proceedings also. This principle has again been followed in **Nakshatrapu Venkateswarlu** (2 supra). Therefore, I am of the opinion that the Court below had erred in refusing grant of relief of possession in execution proceedings on the ground that such relief of possession is not claimed in the suit and was not granted in the decree.

14. One other reason which the executing Court had given for declining to grant relief of recovery of possession is that property was in possession of a tenant. This ground is unsustainable because even according to

respondents, tenant was inducted after the husband of 2nd respondent i.e. 1st respondent died. It is not disputed that

1st respondent had died after the decree. Thus, the tenant was admittedly inducted into possession after the decree was passed in the suit. Therefore, he is bound by the decree and there is no impediment to the Court below to direct his eviction since he cannot claim any right to continue in possession basing on the said lease which is *lis pendens*.

15. Yet another reason given by the Court below for declining the relief of recovery of possession is its observation in para-16 of its order that the petitioner had not brought out the true and correct facts while obtaining the decree and that respondents have alleged that the decree is fraudulent. It is important to note that no steps had been taken by respondents to have the decree set aside in appeal on the ground that it is obtained by playing fraud. No material was placed before the Court below to come to a conclusion that any fraud was played on 1st respondent by petitioner. Therefore this ground for rejection of the E.A. also cannot be sustained.

16. The decision in **V.Ramaswami Aiyengar** (3 supra)

relied upon by the petitioner is also not applicable because no doubt in the said case it was observed that the execution Court should give effect to the terms of the decree and cannot go beyond the decree. But those observations were made in relation to a suit based on a mortgage and not in relation to a suit for specific performance, for which there is a specific provision in Section 28 of the Specific Relief Act, 1963 entitling the Court to grant relief of possession also and barring a party from filing another suit.

17. The decision in **Shankar Popat Gaidhani** (4 supra) cited by the learned counsel for respondents is also not applicable because in the said case, the possession of property with a tenant was pleaded in the suit itself but the decree in question did not grant any relief of eviction of tenant. Appeal was filed by the 1st defendant in the suit and in the appeal filed by 1st defendant, the High Court modified the relief and granted relief of recovery of possession, which was questioned in the Supreme Court. The Supreme Court held that in an appeal by a defendant, the plaintiff cannot be granted relief since plaintiff had not questioned the judgment and decree of the trial Court. In the present case, the tenancy in question of the tenant had commenced after the decree and not prior to the

decree. Therefore, this decision has no application.

18. I am therefore of the opinion that the order dt.18-01-2014 in E.A.No.44 of 2013 in E.P.No.27 of 2009 in O.S.No.105 of 2003 of the Senior Civil Judge at Zaheerabad is unsustainable. It is accordingly set aside and the said E.A.No.44 of 2013 is allowed.

19. The Civil Revision Petition is accordingly allowed. No costs.

20. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-08-2015

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[\[1\]](#) AIR 1982 SC 818

[\[2\]](#) 2012(1) Decisions Today (AP) 223

[\[3\]](#) AIR 1951 SC 189

[\[4\]](#) AIR 2003 SC 1682

[\[5\]](#) 1999(5) ALT 499