

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.R.P.Nos.835 OF 2008

&

1026 OF 2008

Dated 20-6-2016

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C.R.P.Nos.835 OF 2008

Between:

Antyakula Suryanarayana Murthy.

..Petitioner.

And:

Antyakula Eswara Rao and others.

..Respondents.

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C.R.P.No.1026 OF 2008

Between:

Antyakula Suryanarayana Murthy.

..Petitioner.

And:

Antyakula Venkata Ramana and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

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COMMON ORDER:

C.R.P.No.835 of 2008 is filed against order dated 25-10-2007 in I.A.No.563 of 2005 in O.S.No.23 of 1987 and C.R.P.No.1026 of 2008 is filed against order dated 30-8-2007 in I.A.No.741 of 2005 in O.S.No.23 of 1987 on the file of Senior Civil Judge, Bobbili, Vizianagaram District.

Common arguments are submitted in both these revisions.

One Antyakula Eswararao filed O.S.No.23 of 1987 under Section 14 (2) of Arbitration Act to direct the arbitrators to produce the original award dated 4-2-1982 and make it a rule of law. Antyakula Venkata Ramana filed O.S.No.25 of 1987 for partition of the joint family properties of late Antyakula Appala Swamy and these suits were tried together and the suit filed by Antyakula Eswara rao (O.S.No.23 of 1987) was dismissed and suit filed by Venkata Ramana (O.S.No.25 of 1987) was decreed as against which Eswararao preferred C.R.P.No.3692 of 1999 and A.S.No.612 of 1989 respectively before this court and by a common judgment dated 5-10-1999, this court allowed C.R.P. and decreed O.S.No.23 of 1987 and allowed A.S.No.612 of 1989 through which O.S.No.25 of 1987 was dismissed. Venkata Ramana did not prefer any appeal or proceedings questioning the order in C.R.P.No.3692 of 1999 but filed L.P.A. against judgment in A.S.No.612 of 1989 and the said L.P.A. was dismissed. Decree in O.S.No.23 of 1987 has become final confirming the award of the arbitrator dated 4-2-1982, thereafter, Eswararao filed E.P.No.6 of 2000 to execute the decree in O.S.No.23 of 1987 and in pursuance of orders in E.P., he obtained delivery of the land allotted to him and also the house devolved on him after the death of his mother Ramayamma.

It is the contention of Eswararao and Venkata Ramana, these properties are in possession and enjoyment of Suryanarayanamurthy i.e., revision petitioner in both the cases and as he has not paid profits on the land, both Eswararao and Venkata Ramana filed applications before the trial court in O.S.No.23 of 1987 seeking profits from 1982 till actual date of delivery of possession and prayed for appointment of Commissioner to conduct enquiry and determine profits. Revision petitioner herein i.e., Suryanarayana Murthy resisted the

said applications on the ground that there is no prayer in the suit O.S.No.23 of 1987 for mesne profits so also there is no direction in the award for payment of any mesne profits even otherwise during pendency of litigation all the lands were kept fallow and that the revision petitioner herein has not derived any income and therefore, prayed for dismissal of the applications. Considering the contentions and rival contentions of both parties, court below appointed advocate commissioner to ascertain the profits over the schedule property from 1982 till 27-1-2005 and 28-1-2005 respectively by conducting due enquiry. Questioning the said order, these two revisions are preferred.

Heard arguments.

Advocate for revision petitioner submitted that interlocutory applications filed by Eswararao and Venkata Ramana are not at all maintainable as there is no prayer in the suit for mesne profits and that there is no direction in the award for payment of mesne profits. It is further submitted that after delivery is effected and recorded, no further proceedings are maintainable and the court becomes functious officio, and therefore, order of the court below is without jurisdiction and liable to be set aside.

On the other hand, advocate for respondents in both the revisions submitted that after passing of award, the litigation went up to Supreme Court and only in 2010, SLP is dismissed and thereafter, E.P. was filed and all these years, the property was in possession and enjoyment of the revision petitioner, the respondents being decree holders, they are entitled for the profits on the land, claiming such profits, these applications are filed and the court below rightly appointed an advocate commissioner to conduct enquiry and determine the profits. They submitted that after such determination, considering the contentions of both parties, the court has to pass a final

decree for payment of profits but the revision petitioner approached this court at initial stage and stalled enquiry proceedings before advocate commissioner.

In reply, advocate for revision petitioner submitted that order 20 Rule 12 has no application for partition suits and it is equally not applicable to awards passed under the Arbitration Act, therefore, order of the court below is liable to be set aside.

Now the point that would arise for my consideration in these revisions is whether the orders of courts below are legal, correct and proper?

POINT:

There is no dispute with regard to passing of award and carrying on the matter upto the Supreme Court and that the award has become final. Admittedly, award was for division of properties, revision petitioner, Eswararao and Venkata Ramana were allotted specified properties under the award. It is also not in dispute that the award is passed in the year 1982, parties fought the litigation and the finality has come only in the year 2010. It is also not in dispute that the properties were delivered only through execution proceedings and till then, they were under the control of revision petitioner. Now the objection of revision petitioner is that there is no prayer in the suit for mesne profits, so also there is no direction in the award for any mesne profits therefore, respondents are not entitled to file applications for mesne profits.

According to revision petitioner, once, E.P. proceedings are terminated by recording delivery, the court has become functus officio and it has no jurisdiction to entertain any further application, but this contention cannot be accepted because these two applications are filed on original side in the suit but not in the execution proceedings.

Learned advocate for revision petitioners mainly relied on a decision of Supreme Court in *MOHD.AMIN*

AND OTHERS v. VAKIL AHMAD AND OTHERS ^[1] wherein it was observed that when there is no prayer for mesne profits granting of mesne profits is not correct. In that case, suit was filed claiming rights in immovable properties and trial court dismissed the suit against which appeal was preferred to High Court and the High Court after considering the material on record, decreed the suit and also granted mesne profits even though there was no prayer for the same in the plaint. Honourable Supreme Court while confirming the decree passed in favour of plaintiffs therein held that High Court was in error in awarding mesne profits though plaintiffs had not been claimed.

Referring to the above Supreme Court Decision, advocate for respondent submitted that here there was no decree for mesne profits, it is only a claim made and ultimately that has to be decided but in the Supreme Court decision relied on by the revision petitioner, directly decree was passed by the High Court for mesne profits which was held as incorrect by the Honourable Supreme Court. He further submitted that a full bench of this court in *RACHEPALTY ATCHAMMA vs. YERRAGUNTA RAMI REDDI* ^[2] clearly held “where a decree awarding possession is silent with regard to an enquiry into future mesne profits and the decree has not completely disposed of the suit which, for one reason or another, continues to be pending, there is nothing in the Civil Procedure Code prohibiting decree-holder from applying to the court during pendency of such suit for an enquiry into future mesne profits or the Court from ordering such an enquiry.” “But the relief of future mesne profits is a discretionary one and it is open to the court to refuse to exercise discretion in suitable cases.”

As rightly pointed out by advocate for respondents, it is only an application filed on original side i.e., in the suit

seeking determination of mesne profits. As observed by full bench of this court ultimately it is for the court to decide whether to grant or not.

Here, Eswara Rao and Venkata Ramana filed applications for determination of mesne profits from the date of award till the date of actual delivery and the objection of revision petitioner that the land was left fallow and no income was realised is a matter to be enquired in the mesne profits enquiry and that cannot be decided at the initial stage. So, as rightly pointed out by advocate for respondent, the decision of Supreme Court relied on by revision petitioner has no application to the case on hand because the respondents only claimed mesne profits it is ultimately for the court to decide whether to grant or refuse and the objection of the revision petitioner that the Court became functus officio is not at all acceptable.

On a consideration of material on record, I am of the view that there is no jurisdictional error in the order of the Lower Court nor there is any irregularity in appointing Advocate Commissioner for determination of mesne profits against property which admittedly was under the enjoyment of the revision petitioner herein till actual delivery to the respondents herein through court.

For these reasons, it is held that there is no jurisdictional error or any material irregularity to be interfered by this court while exercising revisional powers and as such, these revisions are devoid of merits.

Accordingly, these revisions are dismissed. No costs.

As a sequel to the disposal of these revisions, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 20-6-2016

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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[\[1\]](#) A.I.R.1952 SC 358
[\[2\]](#) AIR 1958 AP 517