

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.634 of 2016

ORDER:

This revision, under Section 115 CPC, is preferred against the order passed by the I Additional Junior Civil Judge, Visakhapatnam in E.A.No.314 of 2015 in E.P.No.62 of 2014 in O.S.No.1538 of 2005 dated 08.12.2015.

The respondent herein filed O.S.No.1538 of 2005 seeking delivery of possession, and for mesne profits. The said Suit was decreed on 27.01.2009, and the petitioners herein were directed to deliver vacant possession of the suit schedule property to the plaintiff after vacating the same on or before 27.05.2009; the respondent-plaintiff was also held entitled for arrears of rent at Rs.2,500/- per month; the petitioners herein were directed to pay damages from 01.11.2004 to 31.05.2005 at Rs.2,500/- per month amounting to Rs.17,500/-; and the respondent-plaintiff was also held entitled for future damages at Rs.2,500/- per month from the date of filing of the suit till recovery of possession.

On the ground that the petitioners herein had neither vacated the premises, nor had they paid damages as directed by the trial Court, the respondent-plaintiff filed E.P.No.62 of 2014. In the said E.P, the petitioners herein filed E.A.No.314 of 2015, under Order 26 Rule 9 CPC, to appoint an advocate-commissioner to make local investigation of the petition schedule property, elucidate the fact of possession, and also whether the property was in good use, and to submit a report.

In the order under revision, the Court below noted that the decree was passed in the year 2009, and the judgment-debtors had not raised any plea that they were not in possession of the premises; the executing Court can only determine questions between the parties to the Suit, and is precluded from going behind the decree unless it is passed by a court lacking inherent jurisdiction; in the present case, the Court had passed a decree after an elaborate trial, and had directed the petitioners herein to vacate the premises; consequently, the question of appointment of an advocate-commissioner, to determine whether or not the judgment-debtors

were in possession, was impermissible; appointment of an advocate-commissioner, in matters of this nature, would amount to reopening the entire issue, and may even lead to a situation of annulling the decree; the Court had passed a decree for eviction of the judgment-debtors and, consequently, the executing Court could not go behind the decree; and there was no necessity to appoint an advocate-commissioner to ascertain who was in possession of the petition schedule property.

The Court below has rightly held that the executing Court cannot go behind the decree unless it is passed by a court lacking inherent jurisdiction. It is not even contended before this Court that the Court, which passed the decree, suffered from inherent lack of jurisdiction. Appointment of an advocate-commissioner was sought to ascertain who was in possession of the property. As the decree records that the petitioners herein were in possession and the Court below had, therefore, directed that they should vacate the premises, permitting appointment of an advocate-commissioner, to ascertain who was in possession of the property, would result in the Executing Court going behind the decree which is impermissible in law. The Court below had rightly rejected the request of the petitioners herein for appointment of an advocate-commissioner.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:07.04.2016.

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