

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 5711 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 10.11.2016 in E.A.No.331 of 2016 in E.P.No.131 of 2007 in O.S.No.75 of 1989 on the file of the Principal Junior Civil Judge, Chirala.

The petitioners herein are respondents 7 to 9 in E.A.No.331 of 2016. The said E.A was filed by the decree holder/first respondent herein seeking a direction to the Court Amin to break open the lock bolted to the E.P. Schedule property for due execution of delivery warrant as against the obstructers/petitioners herein.

It appears that O.S.No.75 of 1989 was filed for delivery of vacant possession of the property. The decree holder, who obtained the decree in the said suit, filed E.P.No.131 of 2007 on 10.07.2007 seeking delivery of the E.P schedule property. The said Execution Petition was originally filed against respondents 1 to 6 / judgment debtors 1 to 6. Thereafter, the third parties, namely, Kurapati Stalin, Kurapati Kamalamma and respondent No.7 i.e., the first petitioner herein filed E.A.No.738 of 2007 under Order XXI Rule 97 C.P.C and the said application was rejected. The first petitioner herein again filed E.A.No.327 of 2013 under Order XXI Rule 99 C.P.C claiming his lease hold rights over the EP schedule property and the said application was dismissed with exemplary costs of Rs.3,000/-. The said order was passed on 03.02.2016 and it has become final. Pursuant to the order passed by the Court below, the Court Amin tried to deliver the property on 05.05.2016, but he

was prevented from executing the warrant. Thereafter, the Court Amin tried to deliver the property on 02.11.2016, but again there was obstruction from the petitioners herein. In those circumstances, the decree holder filed E.A.No.331 of 2016 seeking a direction to the Court Amin to break open the lock bolted to the EP schedule property for execution of delivery warrant against the petitioners herein. The petitioners herein filed a counter stating that the warrant was issued against the original judgment debtors and not against them; that the same was brought to the notice of the Court Amin and that there was no obstruction on their part. The trial Court, while considering the said averments, passed the impugned order with the following observations:

“The counsel for respondents 7 to 9 argued that they were not given opportunity to put forth their objections for execution of warrant but R7 who has lost twice the petitions filed, has no manner of no locus standi to put forth his case. R7 is the person committing gross abuse of process of Law. However, R7 to R9 filed counter and this court heard them. This court perused the affidavit of Court Amin filed along with unexecuted warrant dated 04.11.2016 and found the obstruction on the part of R7 to R9 in executing delivery warrant. Hence, it is just and necessary to order coercive steps against R7 to R9 or else ends of justice cannot be meted out. Although the petitioner committed technical defects in filing petitions, the same cannot be taken as an advantage by the obstructors/R7 to R9.”

A perusal of the material papers filed along with the present Civil Revision Petition discloses that on 10.09.2016 i.e., the date on which the impugned order was passed, the trial Court passed another order in E.A.No.332 of 2016 in E.P.No.131 of 2007 in O.S.No.75 of 1989 granting police aid for execution of delivery

warrant. But, however, challenging the said order, no revision petition is filed.

Since the trial Court has passed the impugned order taking into consideration the over all circumstances and also keeping in view the dismissal of previous Interlocutory Application filed by the petitioners, this Court is not inclined to interfere with the said order.

The Civil Revision Petition is accordingly dismissed at the admission stage.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 18.11.2016
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(A.RAMALINGESWARA RAO, J)

