

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4596 of 2013

ORDER:

The revision petitioner was the unsuccessful applicant in E.A.No.18 of 2013 in E.P.No.50 of 2006 in O.S.No.472 of 2005 on the file of IV Additional Senior Civil Judge, Full Additional Charge for XI Additional Senior Civil Judge (FTC), City Civil Court, Hyderabad.

The factual background is that the revision respondent Smt. Devi maintained the suit supra for ejectment of the defendant from the plaint schedule property. It was an exparte decree dated 27.01.2006 and the exparte decree was executed in E.P.No.50 of 2006 for recovery of possession and possession was taken through Court pursuant to the exparte decree. Subsequently on came to know by the defendant alleging not served with the summons in the suit before passing exparte decree by setting him exparte, filed application in I.A.No.757 of 2006 to set aside the exparte decree and the same was allowed. The defendant pursuant to the exparte decree set aside supra, sought for restitution of redelivery of the property by filing E.A.No.167 of 2006. The restitution application was dismissed with observation that the suit since restored by setting aside the exparte decree is under contest pending and it is subject to the result, the restitution can be sought. The order virtually shows not chosen to consider at this stage though otherwise restitution is entitled, from the larger interest in saying suit is under contest though possession delivered based on exparte decree that was set aside and to abide by the result of the suit by the parties. Undisputedly, the suit on contest was ended in dismissal vide judgment dated 15.02.2010. The plaintiff unsuccessfully maintained A.S.No.90 of 2010. As can be seen from the appeal dismissal decree and judgment dated 31.12.2012, no doubt pending appeal there was suspension of the operation of the trial Court's dismissal decree. That order of stay granted pending appeal in I.A.No.1046 of 2010 thereby is coterminous with appeal result. It is

from the factual background, the defendant from the plaintiff went unsuccessful in the suit O.S.No.472 of 2005 including in the appeal from the Doctrine of Merger and trial Court decree made final with appeal result also, sought for restitution in E.A.No.18 of 2013 before the trial Court. The trial Court dismissed the application with observation that there is delay of 3 years and as per Article 137 of the Limitation Act, 1963, restitution application in E.A.No.18 of 2013 sought is barred by time.

A perusal of the impugned order of the lower Court dated 20.08.2013 in E.A.No.18 of 2013 in the factual background supra is nothing but misconceived outcome on facts and law without proper analysis and understanding. Once under the Doctrine of Merger and principle of appeal is continuation of suit and the plaintiff went unsuccessful including in the appeal vide judgment dated 31.12.2012 in A.S.No.90 of 2010 even in restitution application for arguments sake, the residue provision under Article 137 of Limitation Act of 3 years taken applied to count, only to commence from next day of 31.12.2012 to mean from 01.01.2013 and to compute that 3 years period therefrom is till 01.01.2016 and once the application E.A.No.18 of 2013 filed well within time apart from that limitation has no application strictly for restitution that to when there are Court proceedings including stay obtained in the appeal against the operation of the dismissal judgment and decree of the trial Court.

Having regard to the above, this revision petition is allowed setting aside the impugned order of the lower Court dated 20.08.2013 in E.A.No.18 of 2013 and the E.A.No.18 of 2013 is allowed of the lower Court is allowed by ordering restitution enabling the petitioner/defendant of the suit O.S.No.472 of 2005 to recover back possession through Court by virtue of this order as if it is a decree.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 20.07.2016
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