

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1385 of 2014

ORDER:

This Civil Revision Petition is filed aggrieved by the docket order dated 21.04.2014 in E.A.No.38 of 2014 in E.P.No.22 of 2011 in E.P.No.126 of 1988 in O.S.No.266 of 1986 on the file of the Junior Civil Judge, Prathipadu.

2. Heard both sides.

3. Undisputedly, the property covered is the decree schedule of O.S.No.266 of 1986. Though the suit before the trial Court was decreed, same was reversed by the 1st appellate Court in A.S. No.37 of 1988, and the same was when impugned in S.A.No.572 of 1994, that was also ended in dismissal confirming the order of restitution of possession to the defendants of said suit. While same under execution in E.P. No.126 of 1988 which is subject matter of restitution of the property in Survey No.74 in two items of each Ac.0.08 cents viz., 74/ 1A, 74/ 1A1 which is out of total extent of the Field No.74 of Ac.9.47 cents, the revision petitioner also making a claim as a third party claiming Ac.0.32 cents with a separate sub-division out of the Field No.74 as 74/ 1A of Ac.0.10 cents, Survey No.74/ 1B of Ac.0.11 cents, Survey No. Survey No.74/ 1A2 of Ac.0.09 cents, Survey No.74/ 4A of

Ac.0.02 cents. The claim petition is no doubt dismissed in E.A.No.124 of 2012 after enquiry. There are certain findings positive to the claim. However, the conclusion is wrong with reference to Ex.P7 sale deed, though Ex.P4-Will held rightly not proved by complying with the twin requirements of Section 63 of the Indian Succession Act by examination of atleast one of the attestors.

4. The said findings are no doubt subject matter of AS (S.R.) No.635 of 2014 on the file of the Senior Civil Judge, Peddapuram with delay condonation application pending service of notices. Thus, we need not go into the claim petition contest and the findings therein, but for to the limited extent noted above for the reason, pursuant to the restitution order in favour of the defendants to the suit as petitioners in E.P.No.126 of 1988, they are entitled to the property what is ordered by restitution in E.A.No.67 of 2009, undisputedly.

5. In the Field No.74 from the above facts, when total extent is Ac.9.47 cents and as the D.Hr. claims for Ac.0.16 cents and what the claimants/revision petitioners, whose claim no doubt dismissed, which is subject matter of appeal subject to admission, are claiming is Ac.0.32 cents for a different extent, it requires demarcation by localization even

for delivery with the assistance of the Surveyor through advocate commissioner from requisition of the parties.

6. Accordingly, the Civil Revision Petition is disposed of by directing the lower Court pursuant to the delivery warrant entrusted to the Amin to localize the property covered by the E.P.Schedule from identification with reference to the assistance of the Surveyor and then to deliver the same to the D.Hr. from whosoever person in possession including the claimants if any. As warrant already entrusted to the Amin the only thing to be done is naming an advocate commissioner to assist the Amin or directly instead of Amin, with the assistance of the Surveyor to execute the warrant by Commissioner by localization and delivery. The lower Court shall complete the process within three months from the date of receipt of copy of this order. No order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:06.12.2016
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