

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3723 of 2014

ORDER:

The unsuccessful petitioner/2nd plaintiff filed this revision under Article 227 of the Constitution of India, against the order, dated 22.09.2014, of the learned Senior Civil Judge, Tadepalligudem of West Godavari District, passed in IA.no.1576 of 2012 in OS.no.278 of 2012 filed under Order XV-A of the Code of Civil Procedure, 1908, requesting to strike off the defence of the defendant and forthwith order eviction of the defendant from the terraced upstairs building bearing door no.28-91 situate in an extent of 422 square yards of site and a tiled house with two portions bearing door nos.30-18 and 28-159 situate in an extent of 310 square yards, which are morefully described in item nos.1 and 2 of the plaint schedule.

2. I have heard the submissions of Sri D.Madhava Rao, learned counsel for the revision petitioner-2nd plaintiff. Though the respondent is served with notice, none appeared. I have perused the material record.

3. The case of the petitioner as stated in the affidavit filed in support of the petition, in brief, is this:

The 1st plaintiff (since died on 27.08.2007) is the mother of the 2nd plaintiff. She had executed a settlement deed in favour of the 2nd plaintiff. She has also executed a registered Will dated 29.06.2006 bequeathing all her properties to the 2nd plaintiff. As per the bequests in the Will, the 2nd plaintiff is entitled to continue the suit; she was already brought on record as 2nd plaintiff subsequent to the death of her mother, 1st plaintiff. In the suit, the 1st plaintiff earlier filed IA.no.683 of 2005 requesting to appoint a Receiver and take possession of the plaint schedule property. The trial Court was pleased to pass an order directing the defendant to pay Rs.2,800/- per month pending final

disposal of the suit, with effect from February, 2006. Aggrieved of the said order, the defendant preferred CMA.no.15 of 2006 on the file of the Court of the learned IV Additional District Judge (Judge, Fast Track Court), Tanuku of West Godavari District. The learned Additional District Judge dismissed the said appeal by order dated 08.02.2007 and confirmed the orders of the trial Court. In the CRP.No.1373 of 2007 filed by the defendant against the orders in the CMA, this Court granted interim stay orders in CRPMP.No.2533 of 2007 directing the defendant to deposit Rs.2,000/- per month from February, 2006 till the disposal of the CRP and further ordered that the arrears, if any, shall be deposited within four (04) weeks from that order dated 09.07.2005 and that future rents for every month shall be deposited by 10th of every succeeding month. It is also observed in the said orders that failing compliance of the said orders, the said orders shall stand vacated. The defendant failed to comply with the above said conditions imposed by this Court. The CRP was disposed of on 14.12.2010. The defendant deposited Rs.22,500/- upto 16.4.2007. Subsequently, she did not deposit any amounts. Since the defendant failed to comply with the directions of the Court, she is not entitled to defend the suit. She avoided to pay the amounts and failed to deposit the amounts after May, 2007. She is acting dishonestly and illegally. For the wilful disobedience of the orders of the Courts, her defence is liable to be struck off and eviction orders are to be passed forthwith.

4. The case of the defendant in her counter, in brief, is this:

The material allegations in the affidavit of the 2nd plaintiff are false. The allegations that the 1st plaintiff executed a settlement deed in favour of the 2nd plaintiff and that the 1st plaintiff executed a registered Will dated 29.06.2006 bequeathing all her properties are all false. This defendant deposited an amount of Rs.22,500/- up to 16.04.2007 and later failed to deposit any further amounts and that this defendant did not either pay any amount after May, 2007 or deposit

any amounts into Court as per the Court orders and acted dishonestly and illegally and therefore her defence is liable to be struck off and a decree of eviction is to be passed forthwith are all false. The orders passed IA.no.683 of 2005 have become infructuous after the death of the 1st plaintiff. The 2nd plaintiff is not a party to the revision proceedings in CRP.no.1373 of 2007. There is neither wilful negligence nor laches on the part of this defendant in not depositing the amounts. The 2nd plaintiff is not entitled to seek the reliefs by virtue of the earlier orders obtained by the 1st plaintiff, as she is not a party to the proceedings at the earlier stage. Provisions of Order XV-A are not applicable. The petition may be dismissed.

5. At the hearing before the trial Court, no oral and documentary evidence was adduced. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the 2nd plaintiff. Hence she is before this Court.

6. The learned counsel for the 2nd plaintiff while reiterating the case of the 2nd plaintiff, which is narrated supra, contended as follows: "The defendant is squatting on the property without paying Rs.2,800/- per month as directed in the orders of the trial Court, which are confirmed in the CMA and the CRP. She did not pay any amount except Rs.22,500/-. While dismissing the application filed for appointment of Receiver, the trial Court ordered that the defendant shall pay Rs.2,800/- per month pending disposal of the suit with effect from February, 2006, and further observed in the said orders that if the defendant fails to deposit the said amounts by 10th of every month a Receiver would be appointed for collection of rents and to deposit the same into Court. On the failure of the defendant to pay the amounts as directed in the orders of the trial Court, which are confirmed by the superior courts, the 2nd plaintiff is constrained to file the application seeking to strike off the defence of the defendant and to order her eviction forthwith for wilful disobedience of the orders of the Court. The trial

Court mechanically passed an order dismissing the petition, *inter alia*, observing that the dispute is between the plaintiff and her younger daughter-in-law and that the defendant is in possession and enjoyment of the property and that as she had denied the right of the plaintiff, the relationship cannot be termed as a jural relationship of landlady and tenant between the deceased 1st plaintiff and the defendant and that therefore Order XV-A of the Code is not applicable and the relief cannot be granted. The said reasoning of the trial Court is totally erroneous. For application of the said provision, there need not be a jural relationship. The mere fact that the suit is filed for eviction of the defendant and recovery of possession of the schedule property besides the relief of recovery of arrears of rent from the date of suit is sufficient to take aid of Order XV-A. Even in an eviction suit against a person squatting on the property, without paying any amount, the said provision of the law can be invoked. In-fact, the 1st plaintiff during her life time filed an application for appointment of a Receiver. While dismissing the said petition, directions to deposit amounts/rents were given. The Court below ought to have noted that on the death of the mother, 1st plaintiff, the 2nd plaintiff who is her daughter was brought on record in view of the settlement deed and registered Will executed by the 1st plaintiff in favour of the 2nd plaintiff, who is no other than her daughter. The order is unsustainable.”

7. I have given detailed and thoughtful consideration to the facts and submissions. The orders directing the defendant to deposit Rs.2,800/- on or before 15th of every month have become final. As per the said orders, she is required to deposit Rs.2,800/- per month with effect from February, 2006 onwards. Though the said orders are passed while dismissing an application for appointment of a Receiver, the defendant is bound under facts and in law to deposit the amounts as directed in the orders of the trial Court, which are confirmed by the superior courts. One of the contentions of the 1st plaintiff is

that the defendant is in unauthorised possession of the plaint schedule property and that she is collecting rents from the tenants by leasing out the properties. The 1st plaintiff during her life time also contended that she acquired rights in the property by virtue of a Will executed by her husband. The Courts below while disposing of the application for appointment of a receiver and the CMA, observed that the defendant did not claim independent title and that she is only claiming right to continue in possession by means of adverse possession and that therefore she is admitting the title of the 1st plaintiff and that the 1st plaintiff established that she is entitled to a half share in item no.1 of the plaint schedule property and that she was kept out of possession unauthorisedly and that therefore the 1st plaintiff is entitled for receiving the rents, which the defendant is collecting from the tenants. The Courts below also noted that the defendant admitted that she leased out three portions in the ground floor in item no.1 on a monthly rent of Rs.600/- and that the tiled house is leased out to the tenants and that therefore there is sufficient material to come to a conclusion that the defendant is leasing out the portions of the properties and getting rents. In view of the fact that the defendant is collecting rents, the orders directing the defendant to deposit Rs.2,800/- came to be passed. Since the said orders are not being complied with, the present petition is filed to strike off the defence of the defendant and forthwith order her eviction from the plaint schedule property. Be that as it may. The defendant is not in actual physical possession of the property and she is enjoying the property by leasing out to tenants. Nonetheless, if her defence is to be struck off and eviction is to be ordered, in the absence of tenants as parties to the suit, the eventual sufferers would be the tenants who are in occupation of the properties and are paying rents to the defendant. Therefore, in the facts and circumstances of the case, this Court is of the considered view that the provisions of Order XV-A cannot be applied as the

defendant is not in physical possession and as her possession is through her tenants, who are paying rents to her. Though not for the reasons assigned by the trial court, for the reasons stated above, this court is of the considered view that the petition of the 2nd plaintiff directing to strike off the defence and order eviction of the defendant forthwith from the plaint schedule property is misconceived and not maintainable.

8. It is not out of place to mention that if the defendant is not complying with the orders of the Court in IA.no.683 of 2005, which are confirmed by the superior Courts, it is for the 2nd plaintiff to pursue the remedies open to her, if she so chooses to do, and seek appointment of a Receiver for collection of rents from the tenants, in view of the observations in the orders of the trial Court that on failure of the defendant to comply with the orders in regard to deposit of the rents, a Receiver would be appointed for collection of rents. However, the application invoking the provision of Order XV-A is not maintainable, in the facts and circumstances of the case.

9. In the result, the Civil Revision Petition is dismissed confirming the orders of the trial Court. It is needless to state that if the 2nd plaintiff/revision petitioner files an application to appoint a Receiver for collection of rents as per the earlier orders of the trial Court, the trial Court shall give an opportunity of hearing to the defendant and then pass appropriate orders in strict accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

21st December, 2016
Vjl