

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4165 of 2015

ORDER:

This Civil Revision Petition, under Section 115 of Code of Civil Procedure, 1908 (for short 'the Code'), filed by the Decree Holder is directed against the order dated 14.08.2015 of the learned IX Additional Chief Judge, City Civil Court, Hyderabad passed in E.A. no.29 of 2015 in E.P. no.31 of 2014 in O.S. no.126 of 2014 filed for stay of the execution proceedings in E.P. no.31 of 2014 pending final disposal of the Claim Petition in E.A. no.30 of 2015.

2. I have heard the submissions of the learned counsel for the revision petitioner/decreed holder ('the decreed holder', for brevity) and learned counsel for the respondents 1 to 6/the claim petitioners ('the claim petitioners', for brevity). I have perused the material record.

3. Having obtained a decree, the decreed holder had filed the Execution Petition and had obtained a regular registered sale deed and had further sought for the delivery of the possession of the decree schedule properties. Resisting the delivery of possession, the claim petitioners had filed a claim petition under Order XXI Rule 97 of the Code. Along with the claim petition they have also filed the aforementioned execution application for grant of stay of all further proceedings in the Execution Petition. That petition was resisted by the decreed holder. On merits, the trial Court had allowed the petition and granted stay.

4. The aggrieved decreed holder, in the affidavit filed in this Revision petition, had urged that the contentions of the claim petitioners that the suit is a fraudulent suit and that the decree obtained is a fraudulent decree are all false and that in view of the decisions of the Supreme Court which are applicable to the facts of this case, the claim petition is not maintainable and that, therefore, the Court below ought not to have granted stay of the Execution Petition.

5. The learned counsel for the claim petitioners would submit that in view of the change in the legal position, which is applicable to the claim petition, the claim petition has to be tried as a suit; and that once the claim petitioners had resisted for delivery of the decree schedule property, the Executing Court has to dispose of the said claim application in the first instance without directing the delivery of the property; and that therefore, the order of stay granted by the Court below is sustainable; and that the said order does not warrant interference.

6. The legal position on the aspect involved in this revision is no longer *res integra*.

In **Silverline Forum Pvt. Ltd. V. Rajiv Trust and another**^[1], the Supreme Court had held that resistance offered by third parties can be subject matter of a petition under Rule 97 of Order XXI of the Code. A similar view was also expressed in **Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal**^[2].

7. As per settled law, claim petitions can be filed before the executing Court even before the claim petitioners who are in possession of the decree schedule property lose possession to the Decree Holder. Further, the ratio in the decision in **Ashan Devi and Another v. Phulwasi Devi and others**^[3] and the settled law clearly stipulate that the executing Court has the authority to adjudicate all the questions pertaining to title or interest in the property arising between the parties and it also includes the claim of the stranger who apprehends dispossession or has already been dispossessed from the immovable property. Therefore, the Code enjoins the executing court with a duty and empowers it to adjudicate the *lis* for the purpose of avoiding multiplicity of proceedings.

8. Having regard to the facts of the instant case and the submissions made on behalf of the parties, which are undisputed, and also the settled position of law, this Court finds that the Executing Court has to decide the application filed by the claim petitioners in the first instance in accordance with the procedure established by law, before proceeding with the further steps in the Execution Petition, as rightly argued by the learned counsel for the claim petitioners. Viewed thus, this Court finds that the order impugned does not warrant interference.

9. In the result, the Civil Revision Petition is dismissed. Having regard to the fact that the execution proceedings are at an advanced stage, the Executing Court is directed to dispose of the claim petition in EA no.29 of 2015, as expeditiously as possible and preferably within a period of three (3) months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. Seetharama Murti, J

19th April, 2016.
Rds

^[1] AIR 1998 SCW 1544

^[2] AIR 1997 SC 856

[\[3\]](#) AIR 2004 SC 511