

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5468 of 2015

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code' for brevity) by the 8th defendant/Judgement Debtor is directed against the orders dated 30.10.2015 of the learned Principal Junior Civil Judge, Tirupati of Chittoor District passed in EA.No.207 of 2015 in EP.No.15 of 2015 in OS.No.537 of 1995 filed under Section 151 of the Code requesting to stay all further proceedings in the aforementioned EP in view of the status quo orders passed in WP.No.6298 of 2014 and the pendency of the revision in RP.No.V2/64 of 2014 before the Revisional authority.

2. I have heard the submissions of Sri P. Venu Gopal, learned senior counsel for the petitioner/8th defendant/JD ('the JDr', for short) and the learned counsel for the respondents 1 and 2/plaintiffs/DHrs ('the DHrs', for short). I have perused the material record.

3. The case of the JDr as set out in the affidavit filed in support of the Execution Application and as per the submissions of the learned senior counsel, in brief, is as follows:

Aggrieved of the judgment and decree passed in OS.No.537 of 1995 on the file of the Court of the learned Principal Junior Civil Judge, Tirupati, the JDr and others had preferred an appeal in AS.No.19 of 2000. The said appeal was dismissed on 05.04.2006 by the learned III Additional District Judge, Tirupati. The second appeal in SA.no.613 of 2006 was dismissed by this Court on 15.11.2006. The SLP.no.4184 of 2007 was also dismissed by the Supreme Court on 21.01.2014. Hence, the DHrs had filed the EP. The entire dispute is based on a patta granted by the revenue authorities. The claim of the JDr and others is

that without notice, the vendor of the DHrs had claimed the patta in question. Aggrieved of the proceedings of the Inam Deputy Tahasildar, an appeal was preferred before the Revenue Divisional Officer (RDO) concerned. However the same was dismissed on 29.01.2014. Aggrieved of the said orders of the RDO, the JDr had preferred a revision in RP.no.V2/64 of 2014 before the Chief Commissioner of Land Administration, AP and the said revision is pending. The JDr had filed an application in the said revision petition to implead the present DHrs, who are the legal representatives of the original deceased DHr-Vishnu Priya and the said application filed on 17.03.2015 is pending. The suit proceedings are based on a patta of the vendor of the plaintiff/deceased DHr. The said patta is now under challenge in the revision before the Chief Commissioner of Land Administration (Revisional authority). Further, this Court in the writ petition (WP.no.6298 of 2014) had granted status quo orders to be maintained over the EP schedule property till the disposal of the revision petition before the said Revisional authority. Hence, the JDr is advised to file an application for grant of stay of all further proceedings in the EP. The said petition was resisted by the present DHrs. By the orders impugned, the Court below had dismissed the said petition. Hence, the present revision petition is filed by the JDr.

4. Per contra, the submissions of the learned counsel for the DHrs, in brief, are as follows:

Admittedly, the suit was decreed. The first appeal suit and the second appeal were dismissed. Even the SLP was dismissed and the Supreme Court had confirmed the decree and judgment in favour of the deceased DHr i.e., the present DHrs. Therefore, for realisation of the fruits of the decree granted in a very old suit of the year 1995, the EP is filed for ordering delivery of possession of the EP schedule property i.e. only Ac.0.03 cents out of Ac.0.40 cents with a shed and two huts

electrified within the boundaries mentioned therein. The present petition of the JDr is not bona fide. A second round of litigation is started to harass the DHrs. It is false to state that the entire dispute is based on a patta granted to the vendor of the DHr under the AP Inams Abolition Act of 1956 and that the said patta was obtained behind the back of the JDr and others and without a notice to them. This contention was raised in the suit and the same was discussed in the judgments of the trial court, appellate court and High Court and was rejected as not correct. The self same contention cannot be raised by the JDr once again in the execution proceedings. The DHrs had come to know of the revision petition before the Chief Commissioner of Land Administration only after the filing of the EP and after filing the implead petition in the said revision to bring them on record as legal heirs of the deceased sole DHr. Mischievously and wantonly the present DHrs were not added as parties in the said revision petition pending before the Revisional authority. The revision petition before the Chief Commissioner, Land Appeals has nothing to do with the civil Court decree and the present EP. It is false to state that this Court had ordered status quo to be maintained over the EP schedule property. The status quo orders are not applicable to the execution proceedings. The pendency of the revision petition before the Chief Commissioner of Land Appeals and the status quo orders, which are not binding on the present DHrs, shall not come in the way of the execution of the decree confirmed by the Supreme Court of India; and the present stay petition is devoid of merits. The Court of execution had rightly dismissed the petition filed for grant of orders of stay. The order impugned, in the facts and circumstances of the case, does not call for interference.

5. I have bestowed my attention to the facts and the submissions. There is no dispute with the chronology of events right from the commencement of the lis with the institution of suit by Vishnu Priya (since deceased) and till the decree obtained in her favour in OS.no.537

of 1995 becoming final on the dismissal of the first appeal suit, second appeal and finally the SLP by the Supreme Court. After the decree had attained finality, the present DHrs, who are the legal representatives of the deceased DHr, had filed the execution petition for delivery of the EP schedule property, which is only Ac.0.03 cents out of Ac.0.40 cents with constructions thereon etcetera as already noted. On the contention and the foundation that the entire suit proceedings were based on a patta, which was said to have been granted behind the back of the JDr and others, an appeal proceeding was initiated before the RDO and the said appeal was dismissed on 29.01.2014. Thereupon, the JDr had preferred RP.no.V2/64 of 2014 before the Revisional authority i.e., Chief Commissioner of Land Administration and the said revision petition is pending. Originally, in the said revision petition, the present DHrs, who are the legal representatives of the deceased DHr, were not impleaded. Admittedly, steps have been taken by filing an interlocutory application in the said revision petition for bringing on record the legal representatives of the deceased DHr. At this instant, on the grounds that the said revision petition is pending before the Revisional authority and that in a writ petition, this Court had granted status quo orders to be maintained over the EP schedule property till the disposal of the said revision petition before the Revisional authority, the JDr now seeks stay of the execution of the proceedings till the dismissal of the revision petition.

6. In this factual milieu, the questions for consideration are – ‘whether the execution proceedings are liable to be stayed as sought for by the JDr? And, if so, whether the order of the Court below is unsustainable and is liable to be set aside?’

7. I have given my earnest consideration to the facts and the submissions and taken note of the fact that the suit of the year 1995 was seriously resisted by the JDr and other defendants and that the suit was decreed by the original Court and that later, the first appeal suit and the

second appeal were dismissed; and, finally, the SLP was also dismissed by the Supreme Court in January 2014 and that thereafter the present DHrs, who are the legal representatives of the deceased DHr had filed the EP for delivery of the property, which is of an extent of Ac.0.03 cents. Even though the suit is of the year 1995 and the patta was granted long time prior to the suit, an appeal challenging the patta was filed before the RDO highly belatedly and on the dismissal of the said appeal, a revision petition was filed admittedly without impleading the present DHrs who are the legal representatives of the deceased DHr. Be that as it may. Since strong reliance is being placed on the orders of this Court by stating that this Court had directed that status quo shall be maintained, it is necessary to cautiously refer to the said order of this Court in WP.No.6298 of 2014. The said writ petition is filed by the JDr and 3 other defendants against the State and its officers by showing the deceased - Vishnu Priya, the DHr, as the 5th respondent and without impleading in the said writ petition the present DHrs, who are the legal heirs of the deceased DHr. Thus, insofar as the present DHrs are concerned that writ petition was filed against the deceased DHr i.e., a dead person by impleading the official respondents and some other parties, who are unconcerned with the suit. It could not be explained by the JDr as to why some third parties (unofficial respondents) were impleaded to the writ petition without impleading the legal heirs of the deceased DHr. In the said writ petition, on the representation of the learned GP that the JDr and others have preferred a revision and that the said revision is pending before the 2nd respondent in the WP, that is, the Commissioner of Appeals, Land Revenue and that a date is likely to be fixed for hearing of the said revision and that at that time the interim application filed before the said Revisional authority is likely to be considered, this Court deemed it not necessary to issue notices to the respondents 5 to 9 and passed the orders in the writ petition. The

operative portion of the order dated 10th day of March 2014 in the said writ petition reads as follows:

‘Since petitioner’s revision is pending before respondent No.2, I deem it appropriate to dispose of the writ petition by directing respondent No.2 to consider the application of the petitioners for interim relief in the said revision and pass appropriate orders thereon within four weeks from the date of receipt of a copy of this order. Till respondent NO.2 passes appropriate orders, as directed above, status quo, as existing as on today, shall be maintained.’

If this Court was made aware of the true facts that the DHr had died and the legal representatives of the deceased DHr were not impleaded as parties to the said Revision petition, conceivably this Court ought not to have passed orders for disposal of the petition filed for interim relief within four weeks. The said orders were passed on 10.03.2014 without notice to any of the parties and only after hearing the writ petitioners including the JDr and on the representation made by the learned GP appearing for the official respondents, viz., The State, the Commissioner of appeals, the RDO and the Tahasildar. At that time, it was not specifically brought to the notice of this court that the 5th respondent therein (DHr) had died and that the legal representatives of the deceased DHr are not made parties to the writ petition. Thus, the orders were passed against the 5th respondent-DHr, who is a dead person even as per the cause title of the writ petition. The present DHrs are not parties to the said writ petition. Had they been arrayed as parties to the writ petition, they would have brought to the notice of this court all the facts when the aforementioned orders in the writ petition have come to be passed. But, they did not have the said opportunity. As rightly contended by the learned counsel for the DHrs any orders passed without notice to the present DHrs do not bind them as per the settled legal position. The said conduct of the JDr and others, who are writ petitioners in the said writ petition, in obtaining orders in the said writ

petition by not impleading the legal representatives the deceased DHr, who are the only necessary and interested parties, would only lay bare that the JDr and others had mislead this Court and had obtained the orders of status quo by playing fraud to squat on the Decree schedule property and delay the due execution of the decree that was confirmed by the Supreme Court. Therefore, this Court finds that the Court below was correct in holding that the status quo orders are not binding on the DHrs as they were obtained by misrepresentation and suppression of facts and by not impleading the present DHrs and by impleading the deceased DHr as the 5th respondent in the writ petition. Since the Supreme Court has confirmed the decree and judgment of the trial Court in a suit which was instituted in the year 1995, this Court is of the well considered view that there are neither bona fides nor merits in the request of the JDr for granting stay of the EP. In the well considered view of this Court, no prejudice would be caused to the JDr if the decree is executed as it is always open to recover back the small extent of property on the disposal of the revision petition, in case of the JDr's ultimate success in the revision petition pending before the Revisional authority, by having resort to the remedy of restitution, which the law, particularly, the law of equity, always permits. It is trite to mention that the learned counsel for the DHrs had fairly submitted that in case of delivery of property to the DHrs, they are prepared to give an undertaking not to make any permanent constructions till the disposal of the revision petition before the Revisional authority.

8. Viewed thus, this Court finds that there is no merit in the revision and that the revision petition is liable for dismissal.

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.

01st March 2016
Vjl

M. SEETHARAMA MURTI, J