

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.6358 of 2012

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure is directed against the order dated 29.11.2012 of the learned II Additional Senior Civil Judge, City Civil Court, Secunderabad, passed in E.P.no.102 of 2012 in O.S.no.632 of 2005.

2. I have heard the submissions of *Sri Srinivas Polavarapu*, leaned counsel for the revision petitioners 2 and 3, who are the legal heirs of the 2nd judgment debtor, and *Sri C.V.Mohan Reddy*, learned senior counsel appearing for the 1st respondent/ Decree Holder. The 2nd respondent herein is the 1st judgment debtor. He is stated to be not a necessary party.

3. The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

The Decree Holder obtained a decree for specific performance against 1st JDr for a perpetual injunction against the judgment debtors 1 and 2 restraining them from alienating the suit schedule property. The operative portion of the decree reads as under:

- “1. that the suit be and the same is hereby decreed by directing the 1st defendant to execute and register sale deed in respect of the suit schedule property in favour of the plaintiff within 2 months from the date of decree, failing which plaintiff is at liberty to get the same done through process of Law.
2. that the suit further decreed, permanently restraining defendants 1 and 2 from in any manner alienating the suit schedule in favour of any other person than the plaintiff.
3. That the defendant do also pay to the plaintiff a sum of Rs.7528=00 towards costs of the suit.”

Later, as the property was in possession of the 2nd judgment debtor (since died), the Decree Holder filed the aforesaid EP for delivery of the decree

schedule property after evicting the 2nd judgment debtor there from. The 2nd judgment debtor filed a counter resisting the EP for delivery of the property. On merits, the executing Court allowed the petition and directed issuance of warrant of delivery on payment of process. Therefore, the aggrieved 2nd judgment debtor filed this revision. Since the 1st petitioner/2nd judgment debtor died during the pendency of this revision, his legal representatives, petitioners 2 and 3, are brought on record.

4. The learned counsel for the revision petitioners would contend as follows:

The executing Court erred in enlarging the scope of the decree and ordering delivery of possession though such relief was neither sought for nor was granted in the suit. The Court below ought to have seen that the 2nd judgment debtor is a tenant and is not claiming any independent rights. Therefore, the remedy open to the Decree Holder is to file a suit for eviction and recover possession. An execution petition for recovery of possession of the property against the tenant in the property is not maintainable. The Court below erred in relying upon the decisions, which are inapplicable to the facts of the case. The Court below ought to have seen that the tenant can be evicted only after issuance of a notice under Section 106 of the Transfer of Property Act and only after a decree is obtained in a suit for eviction and that a tenant in possession of the property cannot be dispossessed pursuant to a decree obtained against the other persons/defendants in a suit for specific performance. The Decree Holder having obtained a decree for specific performance got issued a legal notice dated 27.07.2009 to the 2nd judgment debtor to vacate the premises and deposit arrears of rent. The arrears of rent till filing of the counter were already deposited into the Court; future rents are also being deposited. For evicting the 2nd judgment debtor, execution petition is not maintainable. The only remedy available to the Decree Holder is to seek eviction by following the procedure established by law.

5. *Per contra*, the learned senior counsel appearing for the 1st respondent/ Decree Holder supported the order of the Court below and had contended that the person in possession of a property which is subject matter of a decree for specific performance can be evicted in execution of a decree for specific performance and that the order impugned is right and brooks no interference.

6. In the background of admitted facts and contentions, what is to be noted is that on 15.02.2007 the suit was decreed for the relief of specific performance against 1st judgment debtor and for relief of perpetual injunction against the Judgment debtors 1 and 2 restraining them from alienating the property. The 2nd judgment debtor is admittedly a tenant in the property, which is the subject matter of the suit for specific performance. Therefore, the 2nd judgment debtor continued in possession despite the decree holder obtaining a decree for specific performance against the 1st judgment debtor and also a sale deed pursuant thereto. On becoming the owner of the property, the Decree Holder got issued a notice, dated 27.07.2009, stating *inter alia* that he has become the absolute owner of the building covered by the decree schedule and that the 2nd judgment debtor is a tenant in the property and that therefore the 2nd judgment debtor, who is in possession of the ground floor, is liable to pay rents @Rs.3,000/- per month from 21.11.2003 to the end of July 2009 and also to vacate the same as the Decree Holder requires the premises for his personal occupation. So from the undisputed facts, it is clear that even by the date of the agreement of sale executed by the 1st judgment debtor in favour of the Decree Holder, the 2nd judgment debtor is continuing as a tenant in the property. It is also admitted that after his death, the revision petitioners 2 and 3, who are his legal representatives, are continuing in the property as tenants. In fact, the decree holder after obtaining the decree having admitted the tenancy issued a notice demanding the 2nd judgment debtor/tenant to pay the arrears of rents and vacate and

hand over possession of the property. Therefore, it is obvious that the decree holder cannot evict the 2nd judgment debtor/tenant in possession of the property by executing the decree for specific performance obtained against the 1st judgment debtor, who was the erstwhile landlord of the 2nd judgment debtor/tenant. No doubt, the law is well settled that if a decree for specific performance is silent about delivery of possession, the judgment debtor who had executed the agreement can be directed in an execution proceeding to vacate and deliver possession of the property to the decree holder. [See V.Narasimha Chary v. P.Radha Bai¹]. However, the said principle is not applicable to a case of tenant in the property, which is the subject matter of the decree for specific performance. The revision petitioner's, the 2nd judgment debtor's tenancy, is not determined and as his lease was lawful and valid, the possession of revision petitioners 2 and 3/lessees has to be protected since the said lease of their predecessor, the 2nd judgment debtor, is prior in point of time and is subsisting and continuing even after the decree for specific performance. The view of this Court finds support from the decision in Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited².

7. Viewed thus, this Court finds that the Court below was in error in directing the tenant/ 2nd judgment debtor, who is in lawful possession of the premises as a tenant to deliver possession of the property pursuant to the decree for specific performance obtained against the 1st judgment debtor, and though the 2nd judgment debtor is entitled to continue in lawful possession and such possession is to be protected till the 2nd judgment debtor is evicted in strict accordance with the procedure established by law. Since the 1st petitioner, 2nd judgment debtor died, the petitioners 2 and 3 who are his legal representatives are entitled to continue in possession of the decree schedule

¹ 1999 (5) ALT 499

² (2014) 6 Supreme Court Cases 1

property as tenants till they are evicted by the 1st respondent, Decree Holder, in accordance with the procedure established by law. Hence, it follows that the execution petition for recovery of possession of the EP/ Decree schedule property against the 2nd judgment debtor/tenant is misconceived and is not maintainable.

8. In that view of the matter, the Civil Revision Petition is allowed and the order impugned in the revision is set aside. It is made clear that this order shall not preclude the 1st respondent/ Decree Holder from recovering possession of the decree schedule property from the petitioners 2 and 3 by following the procedure established by law and by initiating appropriate independent proceedings, which the law permits.

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

27th August, 2016
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M. SEETHARAMA MURTI, J