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THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CRP No.1792 of 2008

ORDER::

This civil revision petition is filed against the order dated 14-02-2008 passed in EP No.66 of 2005 in OS No.176/1/1955 by the III Senior Civil Judge, City Civil Court, Secunderabad. The said EP No.66 of 2005 was filed seeking arrest and detention of Chief Secretary of the State of Telangana, attachment of movables in the Secretariat and for a further direction to the State of Telangana to remove the fencing put up around the EP schedule land. By the impugned order, the Court below allowed the EP in part directing the respondents (petitioners herein) to remove the fencing within a period of one month from the date of the order, failing which liberty was given to the decree holders to get it removed in accordance with law. Aggrieved by the same, this revision by the State of Telangana represented by the petitioners. Parties in this revision, hereinafter will be referred to, as they were arrayed in the EP.

2. Facts as stated in the execution petition are:-The decree holders are owners of the plots bearing Nos.6,7,8,9,11 and 13 in plot Nos.85 and 86 situated at Jubilee Hills Municipality, now Road No.2, Banjara Hills, Hyderabad, (for short, "the suit schedule property"). The averments made in the affidavit filed in support of the execution petition are that the suit schedule property originally belonged to one Y. Ramachandraiah. That when a dispute was raised about the ownership of the said Y. Ramachandraiah over the suit schedule property, by then State of Hyderabad, he filed suit OS No.176/1/1955 on the file of III Judge, City Civil Court, Hyderabad Deccan, seeking declaration of his title to the suit schedule property and also for perpetual injunction. That in the said suit, the Government Pleader having taken time reported no instructions and ultimately the suit was decreed on 27-11-1957 *ex-parte* restraining the State of Hyderabad from interfering with his possession over

the land and it has become final. That thereafter, the said Y. Ramchandraiah entered into a partnership firm under the name and style of Apex Tyre Manufacturing Company and brought the suit schedule property into the assets of the partnership firm as his capital contribution. Subsequently, the said Y. Ramachandraiah retired from the partnership firm and died, but the surviving partners, on compassionate grounds, inducted his wife Rukkamma into the firm as a partner. While matter stood thus, disputes arose among the partners of the said partnership firm and to resolve the disputes, an advocate *viz.,* Sri Wasim Ahamed was appointed as sole Arbitrator and he passed Award on 07-04-1974 dissolving the partnership firm and allotted the (plots) suit schedule property to the decree holders in the EP and others. That the award was made rule of the Court in OS No.196 of 1974 on the file of IV Addl. Judge, City Civil Court, Hyderabad. That in spite of perpetual injunction binding on the State of Telangana, the officials of the Government encroached into the suit schedule property and erected fencing. Hence, the EP with aforementioned prayer.

3. Counter affidavit was filed by one of the judgment debtor *i.e.* Mandal Revenue Officer, Shaikpet Mandal, Hyderabad, *inter alia* stating that proceedings in suit OS No.196 of 1974 is collusive and not binding on the judgment debtors. That the award passed in that suit is invalid for want of registration, as any transfer of immovable property of more than Rs.100/- is compulsorily registrable under Section 17 of the Registration Act. That the decree holders cannot be termed as transferees of the suit schedule property. That the decree in suit OS No.176/1/1955 on the file of III Senior Civil Judge, City Civil Court, Hyderabad, was an *ex-parte* decree and the decree does not contain the extent of land or description of any property to identify nor any survey number, municipal number or any boundaries mentioned to identify the suit schedule property and as such the said decree is in-executable. That plot Nos.85 & 86 were allotted to one R.C. Iyengar and Syed Riyaz Ahmed, but as they failed to pay requisite consideration, their allotment was cancelled, that neither Y.

Ramachandraiah nor his wife Rukkamma were ever in possession of the suit schedule property. That one Smt. Saroja and Smt. Vijaya have also filed OS No.1533 of 1992 on the file of XIX Jr. Civil Judge Court, Hyderabad, seeking mandatory injunction directing the revenue Department to mutate their names in the revenue records as pattadars in respect of the same suit schedule property in the EP. That the said suit filed by them was dismissed on 03-06-2006 and aggrieved thereby, they preferred appeal in AS No.395 of 2006 on the file of III Addl. Chief Judge, City Civil Court, Hyderabad, which was allowed on 27-07-2008. Against which, the matter was further carried in appeal by the Government in Second Appeal being SA No.585 of 2008 and the same was also dismissed by this Court. That the Government also filed LGC No.11 of 2009 before the Special Court under the AP Land Grabbing (Prohibition) Act against Rukkamma and three others. That in the said LGC, Smt. Saroja and others have filed IA No.473 of 2001 seeking permission of the Special Court to raise fencing around the suit schedule property, but the said IA was dismissed against which they filed WP No.19639 of 2001 before this Court and as per the orders of this Court in the said writ petition, fencing was laid around suit schedule property by the judgment debtors. That subsequently the said LGC was returned as not maintainable. That till the receipt of notice in the EP proceedings, the judgment debtors were not aware of the *ex-parte decree* in OS No.176/1/1955. That the claim of the decree holders in the EP is barred by limitation and that the fencing was done as per orders of this Court in WP No.19639 of 2001. That an application under Section 146 CPC was condition precedent for maintainability of the EP and the same having not been filed and the EP itself being time barred, the Court below ought to have rejected the EP. That in any event there should not have been a direction to remove the fencing from the entire extent of Ac.5-00 of land when there are rival claims including the Government. Hence, the EP is liable to be dismissed.

4. Heard learned Government Pleader for Arbitration appearing for the petitioners and the learned counsel for the respondents.

5. Learned Government Pleader for Arbitration contended that there is no assignment of decree in favour of the decree holders nor they became owners of the suit schedule property by operation of law to enable them to maintain the EP proceedings. It is also contended that the award passed in that suit OS No.196 of 1974 is inadmissible in view of Section 47 of the Registration Act as any transfer of immovable property is compulsorily registerable under Section 17 of the Registration Act. It is also stated that the decree holders cannot be termed as transferees of the suit schedule property and they have not been in possession and even otherwise the decree does not contain the extent of land or boundaries to identify the suit schedule property and as such the decree is in-executable. It is further submitted that the executing Court has no territorial jurisdiction to entertain the EP proceedings and though all these contentious issues were raised, the executing Court erroneously allowed the EP in part, which is liable to be set aside. In support of his contentions, learned counsel relied on the decisions in SUSHIL KUMAR MEHTA vs. GOBIND RAM BOHRA (DEAD) THRU LRS[1], JUGALKISHORE SARAF vs. M/S.RAW COTTON COMPANY LIMITED[2], AZIZ AHMED KHAN vs. I.A. PATEL[3] & SATYANARAYANA vs. SINDHU BAI SHARMA[4]

6. On the other hand, learned counsel for the decree holders contended that the judgment debtors have no right to un-settle the settled things i.e. the decree passed in favour of Y. Ramachandraiah in OS No.176/1/1995 has become final and also the award passed in OS No.196 of 1974 has become final and it has been acted upon. It is also contended by the learned counsel for the decree holders that the judgment debtors cannot base their case on the mitigating factors of the decree

holders, but should assert their case on their own strength. It is also contended that on dissolution of the partnership firm, the assets distributed amongst the partners, need not be registered under Section 17 of the Registration Act, as distribution of properties among the partners of the dissolved firm does not amount to alienation, transfer or extinguishment of any interests. It is also contended by the learned counsel that the judgment debtors have no right to question right and title of the decree holders at the stage of EP proceedings as the executing Court cannot go beyond the scope of the decree. Learned counsel submitted that considering all these aspects of the matter, the executing Court rightly directed the judgment debtors to remove the fencing around the suit schedule property which is liable to be confirmed and the revision be dismissed in *limine.* In support of his contentions, learned counsel relied on the decisions in N. KHADERVALI SAHEB (DEAD) BY LRS vs. N. GUDU SAHIB (DEAD) BY LRS[5], SAMYUKTHA COTTON TRADING COMPNAY vs. BHEEMINENI VENKATA SUBBAIAH[6], RAFIQUE BIBI (DEAD) BY LRS vs. SAYED WALIUDDIN (DEAD) BY LRS[7] & VASUDEV DHANJIBHAI MODI vs. RAJABHAI ABDUL REHMAN.[8]

7. To substantiate their case, the decree holders marked Exs.A-1 to A-12. On behalf of the judgment debtors, Exs.B-1 to B-25 were marked besides examining RWs.1 and 2 as their witnesses.

8. Now the issues that fall for consideration in this revision are:-

1. Whether the judgment and decree dated 27-11-1957 passed in OS No.176/1/1955 is capable of execution in the absence of details as to survey numbers boundaries of the EP schedule land either in the judgment or in the decree & whether the order of the executing Court in directing to remove the fencing put up around the EP schedule land is correct;
2. Whether the respondents-decree holders have *locus standi* to maintain EP;
3. Whether the executing Court has territorial jurisdiction to the entertain the EP; & whether distribution of assets of by way of award dated 07-04-1974 requires registration.

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ISSUE No.1 ::

9. The decree holders claim to be the owners of the plots bearing Nos.6,7,8,9,11 and 13 in plot nos.85 and 86 situated at Jubilee Hills Municipality, now Road No.2 Banjara Hills, Hyderabad. It is their claim that Y. Ramachandraiah purchased Ac.5-00 of land which forms part of plot nos.85 and 86 of the erstwhile Jubilee Hills Municipality for a valid consideration. It has come on record that in the year 1955, when the State of Hyderabad interfered with the possession of enjoyment of the land in question, the said Y. Ramachandraiah filed suit OS No.176/1/1955 for perpetual injunction and the suit was decreed, though *ex-parte* and the said decree became final, as seen from Ex.A-10 copy of the decree and Ex.A-11 copy of the judgment in OS No.176/1/1955. No doubt, the legality, enforceability and operation of such *ex-parte* decree is similar to any decree rendered on merits. It is borne out from the record that on dissolution of the partnership firm vide Ex.A-2 award of the Arbitrator dated 07-04-1974, suit schedule property which became the asset of the firm, as a measure of understanding was allotted to the decree holders in EP and other partners and it was also made rule of the Court in suit OS No.196 of 1974 and all these sequence of events relates to the year 1974. The Arbitrator passed award dividing the land in question into 16 equal plots and dissolved the partnership firm and distributed the plots to the partners. Admittedly, either in the judgment or in the decree passed in OS No.176/1/1955 and in the present EP, no details as to survey numbers or boundaries of the suit schedule land are mentioned. Except stating that the decree holders are owners of plots bearing nos.6,7,8,9,11 and 13 in plot nos.85 and 86 situated at Jubilee Hills Municipality, now Road No.2 Banjara Hills, Hyderabad, no further details are furnished. To be more succinct, the relief prayed and the schedule of the EP reads thus:

"5. **Relief Prayed:**

It is respectfully submitted that the Judgment Debtor violated the decree passed by this Hon'ble Court by erecting a fence over the EP Schedule Property. It is therefore prayed that this Hon'ble Court may be pleased to order attachment of the property of the Judgment-Debtor as shown in the petition schedule property and order arrest and detention of the Chief Secretary of State of Andhra Pradesh (amended as Chief Secretary of State of Telangana) and a further direction to the Judgment Debtor to remove the fencing over the EP schedule land under Order XXI, Rule 32 (2) and (5) of CPC.

SCHEDULE

S.No.	Description of property	Interest of the Judgment Debtor	Encumbrance

All that plots bearing nos.6,7,8,9,11 and 13 in plot nos.85 and 86 situated at Jubilee Hills Municipality, now Road No.2, Banjara Hills, Hyderabad"

10. From a reading of the relief prayed, as also the Schedule, no details as to the survey numbers, extent and also the boundaries of the land in question are discernable. The affidavit filed in support of the EP also does not indicate any details more than what is stated in the EP schedule. Even in the award of the Arbitrator dated 07-04-1974 which is made rule of the Court in OS No.196 of 1974, except mentioning the plot numbers, no further details are mentioned.

11. It is settled proposition of law that in case of doubtful or varying extents in the documents of title relating to the property, boundaries should be preferred to the extent and vice versa. But in this case, there are no boundaries and extents mentioned. When the EP schedule details are vaguely given and the decree holders themselves are not clear about the boundaries, it is not stated to whom which plots are allotted.

12. It is true that the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immoveable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any

property which he has brought in. But upon a dissolution, any part of the partnership property may, by contract of the partners, be converted into separate individual property. (***see Narayanappa vs. Bhaskara Krishnappa AIR 1966 SC 1300***).

13. When once the decree holders claim to be allotees of the plots individually, the necessary corollary requires that they should come with clear details of boundaries and extents when they seek execution of the decree. Rukkamma, wife of late Y. Ramachandraiah, also did not choose to state any thing about the dissolution of the partnership firm and allotment of shares to the decree holders by virtue of the award dated 09-05-1974 of the Arbitrator in WP No.2628 of 1985 filed by her. The executing Court erred in directing to remove the fencing put up around the EP schedule land without there being identity of the plots *vis-à-vis* the corresponding allotee by virtue of the award of the Arbitrator dated 07-04-1974. Burden lies on the decree holders to prove the identity of the land with reference to their respective shares. None of the documents marked show the identify of the land. Order 20, Rule 6 CPC mandates that the decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. In the absence of information as mandated under Order 20, Rule 6 CPC being furnished to identify the suit schedule property by metes and bounds, the decree holders are not entitled to seek execution of the decree.

14. The decree in suit OS No.176/1/1955 is to the extent of Ac.5-00 of land without any survey numbers and without any boundaries being mentioned and under those circumstances the EP schedule property cannot be identified. No witnesses are examined to prove the identity of the land by metes and bounds. It is also not known how documents are marked without examining the witnesses. Mere

marking of documents *ipso fact* does not prove the case. Plaint copy in OS No.176/1/1955 is not marked to identify the boundaries of the schedule property. As noted, the award of the Arbitrator which is made rule of the Court in OS No.196 of 1974, no extent of allotment of the land to each of the partners of the dissolved firm is mentioned. In the circumstances, this Court is of the considered view that the executing Court ought not to have directed to remove the fencing put up around the land since the decree is not capable of being executed for want of clarity as to the actual entitlement of the suit schedule property by the decree holders. The issue is answered in favour of the judgment debtors-petitioners and against the decree holders-respondents.

ISSUE No.2 ::

15. It is to be seen that said Y. Ramachandraiah has brought in the suit schedule property as his capital share and it was admitted as the asset of the firm. As noted above, after dissolution of the partnership firm and after passing of the award, the disbursed partners have got right over the property which is received by them. There need not be any assignment of decree in their favour, but rights in respect of the assets received by them are conferred by operation of law. Division or allotment of assets to the partners which flows upon dissolution, after discharge of liability, is nothing but a mutual adjustment of rights in the property since a partner in the firm has no exclusive right on any property of the firm, there is no element of transfer. Hence, assignment of decree is favour of the decree holders is, by way of operation of law. The decision in ***Satyanarayana vs. Sindhu Bai Sharma (4 supra),*** is a case whereunder the parties during the pendency of the execution petition entered into compromise and in terms thereof, the tenant was to vacate the premises within a time frame and in the meanwhile the landlord sold the subject premises to third parties. Thereafter, the tenant did not vacate the subject premises, as agreed, but raised various objections including continuation of the EP

proceedings by the purchaser, mainly on the ground that the purchaser of the subject property is not a transferee of the decree, though he is a transferee of the subject property from the landlord. In this case, as in the case of ***Satyanarayana's*** case (4 supra), the respondents-decree holders are not third parties to the decree of the Arbitrator dated 07-04-1974 but they are allottees. Dissolution of the firm and distribution of its assets, after adjustment of the liabilities of the firm, was the dispute before the Arbitrator and the present decree holders were parties to the dispute and by way of award of the Arbitrator, which was made rule of the Court in OS No.196 of 1974, they were the assignees of the property.

16. The respondents filed the EP under Order 21, Rule 16 CPC. The contention of the learned Government Pleader for Revenue is that an application under Section 146 CPC was a condition precedent for maintainability of the EP is not tenable in the facts of the present case. Order 21, Rule 16 CPC specifically provides for application for execution by a transferee of decree. *Explanation* to Rule 16 reserves the right of transferee of rights in the property to apply for execution of the decree, without a separate assignment of the decree as required by the said Rule 16. The decree holders are transferees of the decree by operation of law, in which case they can maintain execution petition under Order 21, Rule 16 CPC. Therefore, the EP is maintainable under Order 21, Rule 16 CPC. In ***Jugalkishore Saraf's case (2 supra),*** the Supreme Court while considering whether the respondent-company therein had any right, title or interest in the decree and whether it can be said to be person claiming under the decree-holder held that under the document in question did not transfer the decree, and, therefore, the equitable principle did not apply and, therefore, the respondent company did not become a transferee of the decree within the meaning of Order 21, Rule 16 CPC inasmuch as there was no transfer of the decree by the transferors to the respondent company by assignment of the decree in writing or by operation of law, and under those circumstances, the respondent company cannot apply for execution of the decree under Order 21, Rule 16 CPC. But such is not the case in the instant case as facts of the case are different. The decree obtained by Y. Ramachandraiah in OS No.176/1/1995 has merged into the award of the Arbitrator passed in OS No.196 of 1974 and has become final. It is not a decree passed by a Court of no jurisdiction and it is nobody case that the Court of

first instance which passed the decree in OS No.176/1/1995 has no jurisdiction. There is assignment of decree by operation of law in favour of the decree holders pursuant to dissolution of the partnership firm by virtue of the award of the Arbitrator in OS No.196 of 1974. The decisions in ***Rafique Bibi (7 supra) and Vasudev Bhanjibhai Modi (8 supra)*** enunciate that a decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree. In this case no such steps are taken by the judgment debtors all these years and they claim that they came to know only when notices were issued to them in EP about the judgment and decree in OS No.196/1/1955.

17. It is no doubt true that the decree holders became entitled to claim the suit schedule property by virtue of distribution of residual assets, after settlement of accounts on dissolution of the partnership firm, but it is to be seen that all the allottees of the plots by virtue of award of the Arbitrator are not parties to the EP proceedings. Inasmuch as the shares of the parties which includes the decree holders are not identifiable, the execution petition filed by some of the allottees of the plots in the suit schedule property is not maintainable as from the facts stated, either from the judgment and decree of the suit in OS No.176/1/1955 or from the award of the Arbitrator dated 07-04-1974, the shares of the allotees of the suit schedule property is not clearly mentioned. It would have been altogether a different thing had the decree holders' share of plots are identifiable. Hence, this issue is answered in favour of the judgment debtors-petitioners and against the decree holders.

ISSUE No.3 ::

18. The Court which tried suit OS No.176/1/1955 was III Judge, City Civil Court, Hyderabad Deccan in the year 1955. The present EP is tried by III Senior Civil Judge, City Civil Court, Secunderabad. Though objection was taken by the judgment debtors as to maintainability of the EP on the file of III Senior Civil Judge, City Civil Court, Secunderabad, it is not stated what is the Court corresponding to

the Court of III Judge, City Civil Court, Hyderabad Deccan. ***Sushil Kumar Mehta's case (1 supra)*** relates to a case where the judgment and decree passed by the Court having no jurisdiction and under those circumstances it was held that a decree passed by a Court without jurisdiction is a nullity and that plea can be set up whenever and wherever the decree is sought to be enforced or relied upon, and even at the stage of execution or in collateral proceedings. But such is not the case in the instant case. In ***Rafique Bibi's case (7 supra),*** the Supreme Court observed that a distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. It was held that a decree suffering from illegality or irregularity of procedure, cannot be termed in-executable by the executing Court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree and a decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

19. In ***N. Khadervali Saheb's case (5 supra)*** the Supreme Court while answering the question whether the assets of the partnership firm on dissolution of partnership firm either by way of an arbitration award or by mutual settlement between the parties themselves, held that the document which records the settlement does not require registration under Section 17 of the Registration Act since the document does not transfer or assign interest in any asset. Same is the view expressed by the this Court in ***Samyuktha Cotton Trading Company (6 supra).***

20. In the light of the conclusion reached that the executing Court has jurisdiction to entertain the EP and the allotment of share of property pursuant to the dissolution of the partnership firm does not require registration, this issue is answered in favour of the decree holders-respondents and against the judgment debtors-petitioners.

21. In the facts and circumstances and for the reasons given on *issues 1 and 2,* the impugned order dated 14-02-2008 passed by the executing Court is unsustainable and it is hereby set aside. The civil revision petition is accordingly

allowed. There shall be no order as to costs.

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A. RAJASHEKER REDDY, J

Dated: 15th July, 2016

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<u>THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY</u>

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<u>CRP No.1792 of 2008</u>

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Dated: 15-07-2016

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[1] (1990) 1 SCC 193

[2] AIR 1955 SC 376 (1)

[3] AIR 1974 AP 1

[4] AIR 1965 AP 81

[5] 2003 (1) SUPREME 921

[6] 2004 (5) ALD 497

[7] 2004 (1) SCC 287

[8] 1970 (1) SCC 670