

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.R.P.No.1415 OF 2011

Between:

Smt. Fathima Bi and another.

... Petitioners

VERSUS

**Smt. Julekha Bi (died) by her LR
Chinna Allabakash.**

...Respondent

DATE OF JUDGMENT PRONOUNCED: 02.06.2016

Submitted for approval

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

—

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

-

-

+ C.R.P. No.1415 of 2011

% Dated 02.06.2016

Smt. Fathima Bi and another.

... Petitioners

VERSUS

**\$ Smt. Julekha Bi (died) by her LR
Chinna Allabakash.**

...Respondent

! Counsel for the Petitioner: Sri K.V.Raghuveer, Advocate

^ Counsel for the Respondents: Sri B.Vijay Bhasker, Advocate

>HEAD NOTE:

? Cases referred

[1] 2007 (1) ALD 367
2 (1996) 4 Supreme Court Cases 533
3 (2009) 2 Supreme Court Cases 294

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P. No. 1415 OF 2011

ORDER :

This Civil Revision Petition is filed against the order and decree in E.P.No.71 of 2004 in O.S.No.23 of 1992 dated 28.01.2011, wherein the Court below ordered delivery of possession by 14.02.2011 in respect of the property bearing door No.17/241 in Yemmiganur with boundaries i.e., East: Hut bearing door No.17/240 of Jabbar Sab, West: House bearing No.17/242 belongs to decree holder, North: Hut bearing No.17/241 then CC road; South: Rastha.

2. Heard Sri K.V.Raghuveer and Sri B.Purusotham Reddy, learned counsel for the revision petitioners and Sri Butta Vijay Bhasker,

learned counsel on behalf of the respondent.

3. The main contention of the learned counsel for the revision petitioners is that the decree holder himself could not identify the schedule property as per the decree, as such, the Court below should not have allowed the decree holder to amend the plaint schedule property in execution proceedings. The decree holder has changed boundaries of the schedule property from time to time and the boundaries mentioned in the decree, advocate commissioner's report and EP proceedings are totally different. He would further contend that unless judgment of Court below is suitably corrected, the decree holder cannot alter the decree and that the decree holder has to approach the Court which passed decree with a petition to make appropriate corrections in judgment as also in decree to enable him to realize the fruits of decree passed in his favour. In support of his contention, he relied on the judgment reported in **Yempalla Ramaiah v. Pallamparthi Krishna Reddy and others**^[1]. He would further contend that even if the decree holder files an application under Order 47 Rule 1 and Section 151 CPC, the executing Court cannot go behind decree and amend the same. In support of his contention, he relied on the judgments reported in **Bai Shakriben (dead) by Natwar Melsingh and others v. Special Land Acquisition Officer and another**^[2] and **Deepa Bhargava and another v. Mahesh Bhargava and others**^[3].

4. Learned counsel for the respondent-decree holder contended that the Court below has rightly directed delivery of possession of property as the boundaries mentioned in the warrant in E.A.No.68 of 2008 are tallying with the boundaries mentioned in the Commissioner's report. He would further contend that the decree holder has not changed boundaries of the schedule property.

5. As is well known, troubles of decree holders start when they proceed to execute the decree. I do not find any legal principle that

has been adverted to by the executing Court in ordering delivery of property, with different boundaries other than mentioned in the original decree, in execution petition. The decision of the executing Court is wholly without jurisdiction. This revision petition arising out of execution proceedings, has a checkered history, wherein the original suit was filed in the year 1992 i.e., OS No.23 of 1992. After the same is decreed on 14.07.1997, the defendants preferred AS No.41 of 1997, which was also dismissed on 06.02.2004 on the file of Senior Civil Judge's Court, Adoni. Aggrieved by the decree in first appeal i.e., AS No.41 of 1997, the judgment debtors preferred SA No.1526 of 2005, which was also dismissed on 13.12.2005. By virtue of which, the decree in OS No.23 of 1992 dated 14.07.1997 has attained finality.

6. It is pertinent to note that during pendency of first appeal, the decree holder filed E.P.No.71 of 2004, wherein the judgment debtor filed E.A.No.47 of 2006 under Section 47 and 151 of CPC praying to dismiss the execution petition as non executable and nullity, which was disposed of on 26.06.2006. Aggrieved by the same, the judgment debtors/revision petitioners filed C.R.P.No.5182 of 2006. Though this Court granted interim stay, but before the same was communicated to the executing Court, the EP No.71 of 2004 itself was disposed of on 30.10.2006. Later, on memo filed by the counsel, the matter was listed on 08.11.2006 for filing certified copy of the order of stay granted by this Court. The matter was adjourned for various reasons, the certified copy of stay granted by this Court in CRP No.5182 of 2006 was received by the Executing Court on 10.11.2006. When the matter was posted on 05.01.2007, it was reported that the revision petition i.e., CRP No.5182 of 2006 was dismissed on 06.12.2006 as infructuous and judgment debtors preferred appeal, the matter was posted to 22.01.2007 at the request of the judgment debtors. After several adjournments, even though it was referred to Lok Adalat for compromise, when the matter was not settled at Lok Adalat, it was

posted to 27.04.2007 before the executing Court.

7. A perusal of the docket proceedings in the Execution Petition before the Court below shows that EP schedule property was ordered to be delivered to the decree holder at first instance on 30.10.2006 and again on 23.01.2008, a detailed docket order was passed for delivery of EP schedule property by 25.01.2008. Subsequently, the executing Court found that delivery warrant was not affected as house number and boundaries of schedule property are not tallying. On 07.03.2008, EA No.68 of 2008 was filed under Order 26 Rule 9 of CPC before the executing Court for appointment of Senior Advocate Commissioner to inspect the schedule mentioned property. After hearing both sides, the EA was allowed on merits and in pursuant thereto, an advocate commissioner was appointed. Upon filing of report by the Advocate Commissioner on 09.05.2008 along with rough sketch, work memos by the counsels, the Court below allowed EA directing to deliver EP schedule property by mentioning the following boundaries. i.e., the site towards south of hut bearing door No.17/241 in Yemmiganur with further boundaries as:

East:	Hut bearing door No.17/240 of Jabbar Sab
West:	House bearing door No.17/242 belongs to decree holder
North:	Hut bearing No.17/241 then CC road
South:	Rastha.

8. When the above boundaries mentioned in the execution petition are compared with the boundaries mentioned in the plaint and decree in the suit, they are not tallying. Though the executing Court ordered delivery of schedule property twice, delivery could not be affected since house number and boundaries of the properties are not tallying. Now, the Court below by giving different boundaries than mentioned in the decree in original suit, ordered for delivery of possession basing

on the advocate Commissioner's report. All these facts go to show that the Executing Court allowed the EP with different boundaries than mentioned in original decree.

9. In **Yempalla Ramaiah v. Pallamparthi Krishna Reddy and others (supra)**, a learned Single Judge of this Court held as follows:

"5. Even if I follow the ratio in TIKO case (1 supra) and treat the petition as a petition to amend the decree filed on the original side, but not a petition in execution, in as much as the decree as amended, as per the prayer in this petition would not be in agreement with the operative portion of the judgment it may lead to complications. So unless the judgment is corrected no useful purpose would be served in correcting the decree. So the order under revision is set aside. Respondents are at liberty to approach the Court that passed the decree with a petition for making appropriate corrections in the judgment and consequently, in the decree also, to enable him to realize the fruits of the decree obtained by him."

10. In **Deepa Bhargava and another v. Mahesh Bhargava and others (supra)**, the Hon'ble Supreme Court held that the executing Court cannot go behind the decree and has no jurisdiction to travel beyond the decree and modify the same. Even assuming that the term stipulating payment of interest is penal in nature, the executing court was bound by the terms of the decree.

11. In view of law laid down by this Court as well as Apex Court in the above decisions, the executing Court cannot travel beyond the decree passed in original suit. Even according to the respondents also, the boundaries are not tallying and for any mistake crept in the decree in the original suit, it is for the decree-holder to file a petition under Section 152 of CPC for amendment of decree and judgment and also plaint, which passed decree. But without filing the same, the executing court cannot order delivery of possession of property with the boundaries other than mentioned in the decree in original suit. No doubt, decree holder cannot be denied fruits of decree in his favour, but at the same time, the executing Court cannot go beyond the

decree in original suit and grant relief to the decree holder by delivering the property with different boundaries other than the boundaries mentioned in the decree as well as in execution petition.

The Executing Court instead of allowing application, should have directed the decree-holder to approach the original court for amendment of boundaries in the decree.

For the reasons aforementioned, the impugned order of the executing Court cannot be sustained and same is set aside accordingly. However, it is open for the respondent/decree-holder to file necessary application before the Court, which passed the decree and judgment, for amending the boundaries in the schedule of property in the plaint as well as in the decree. Since the suit is of the year 1992, as and when application is filed by the respondent/decree holder, the same shall be disposed of in accordance with law, as expeditiously as possible preferably within a period of three months from the date of application.

Accordingly, this Civil Revision Petition is allowed. No costs. As a sequel thereto, miscellaneous petitions, if any pending in this CRP, shall stand closed.

A.RAJASHEKER REDDY, J

02.06.2016.

Note: LR copy to be marked.

B/o. kvs

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
C.R.P. No.1415 OF 2011

-
-
-
-
-
-
-
-
-
-
-
Date: 02-06-2016

kvs

[\[1\]](#) 2007 (1) ALD 367

[\[2\]](#) (1996) 4 Supreme Court Cases 533

[\[3\]](#) (2009) 2 Supreme Court Cases 294