

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.2606 AND 2607 OF 2014

COMMON ORDER:

These two Civil Revision Petitions, under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short), are filed by the Judgment Debtors in E.P.No.102 of 2003 in O.S.No.146 of 1998 on the file of the learned Principal Junior Civil Judge, Adoni, Kurnool District.

2. I have heard the submissions of the learned counsel for the Judgment Debtors 2 to 10/revision petitioners ('JDrs', for brevity) and the learned counsel for the respondent/Decree Holder ('DHR' for brevity). The judgment Debtors 3 to 10 are the legal representatives of the deceased 1st Judgment Debtor.

3. I have perused the material record.

4. The facts that lead to the filing of these two revisions may be stated in brief, are as follows:

The suit filed by the DHR for eviction was decreed against Judgment Debtors 1 and 2. The First Appeal and the Second Appeal were dismissed confirming the decree and judgment of the trial Court. The EP was filed in the year 2003. Subsequently, as the property has become a Wakf property, an objection was taken by the JDrs that Wakf Tribunal alone has got jurisdiction. When the matter earlier came up before this Court, this Court by over-ruling the objections raised by the JDrs held that the Court below is entitled to proceed with the EP. According to the DHR, the JDrs are claiming to be in possession as servants of the institution and are continuing in possession on one pretext or the other and that more than 15 years time has elapsed since the date of the suit and that ultimately, when the stage of issuance of warrant for delivery of the property has reached and the Field Assistant/Amin of the Court to whom the delivery warrant was entrusted went

to the schedule property for delivering the property, there was obstruction. Therefore, the DHr filed E.A.No.325 of 2003 under Order XXI Rule 35(1) read with Section 151 of the Code requesting to break open the locks put by the Judgment Debtors on the property to facilitate the delivery of property to the DHr. By orders dated 04.08.2014, the Executing Court had allowed the said petition and accorded permission to the Field Assistant of the Court to break open the locks, if any put by the JDrs, over the property. According to the JDrs, on 31.07.2014, when that application came up for hearing, the JDrs sought for time stating that their counsel gave up vakalat and that they want to engage another counsel and that at such request time was granted to engage a new counsel and that the matter was adjourned to 04.08.2014 and that on that date, the JDrs having engaged a new counsel got filed a petition for adjournment stating that they had engaged a new counsel and therefore an adjournment may be granted and that, however, the Executing Court dismissed the said application for adjournment filed by the JDrs and had passed orders in EA 325 of 2003. Further, the DHr's application in E.A.No.326 of 2003 filed for grant of police aid through the Station House Officer, Adoni I Town Police Station was also allowed by the Court below. Assailing the said orders in both the said EA Nos.325 of 2003 and 326 of 2003, the JDrs had filed these two revisions.

5. In this back drop, the case of the JDrs, in brief, is as follows:

The Court below had erred in directing the Field Assistant of the Court to break open the locks, if any, present on the EP schedule property at the time of delivery and also in directing the Station House Officer, Adoni I Town Police Station to render police aid to the Field Assistant/Amin of the Court at the time of delivery of EP Schedule property. The Court below ought to have seen that the JDrs 3 to 10 were added only on 04.06.2010 on the death of 1st Judgment Debtor, they being the legal representatives of 1st Judgment Debtor. Their former counsel gave away the bundle along with no objection vakalat and, therefore, they had engaged a new counsel. The Court below also granted time at the request of the JDrs 3 to 10 on 31.07.2014 and had permitted them to appoint a new counsel by the date of next adjournment and

had adjourned the petitions to 04.08.2014. In obedience to the directions of the Court below, the JDrs 3 to 10 had engaged a new counsel and the new counsel had filed vakalat on 04.08.2014. He had also filed E.A.No.273 of 2014 seeking (7) days time. The Court below had dismissed the application for adjournment without giving any opportunity to Judgment Debtors 3 to 10 to defend the petitions. The Court below without giving an opportunity of hearing to the Judgment Debtors, allowed both the EAs filed for (i) breaking open the locks put on the schedule property; and, (ii) for grant of police aid. The said orders passed without giving an opportunity to the JDrs are unjust and illegal. The 2nd JDr is a priest of the Darga and the JDrs 3 to 10 are working in the said Darga, which is in an extent of Ac.1.00 cents with shops etcetera, and they are protecting the property. The suit is filed with evil intentions and there is a dispute about the identity of the property.

6. On the other hand the case of the DHr, in brief, is thus:

After the decree for eviction has become final, after the dismissal of the Second Appeal, the Execution Petition is filed for delivery of the EP Schedule property. The Executing Court ordered delivery of the property on 03.07.2003. The Field Assistant of the Court went to the property to deliver the same to the DHr after taking possession from the JDrs. But, the Field Assistant of the Court found that the doors of the property were locked. Thus, the JDrs had successfully prevented the delivery of the property. In the circumstances, the DHr is constrained to file the petitions for breaking open the locks put on the property and to grant police aid for peaceful delivery of the property, as the atmosphere was very tense and there was an apprehension of breach of peace. Despite giving an opportunity to the JDrs 3 to 10 to engage a counsel, the counsel engaged by them did not get ready in the matter and sought adjournment to enable the JDrs to further drag on the proceedings. The EP is of the year 2003 and the suit is of the year 1998. Earlier this Court over-ruled the objection of the Judgment Debtors that the Executing Court has no jurisdiction to entertain the EP and had held that the Executing Court can proceed with the Execution Petition. The JDrs who could not show any right to remain in possession are bound to vacate the

property and deliver the property. But, they are deliberately violating the terms of the decree and dragging on the matter to delay and defeat the just claim of the DHr. The JDrs have no tenable defence, as they are bound by the terms of the decree and are liable to vacate the property by honouring the decree. Hence, the Court below rightly allowed the petition filed by the DHr and directed the Court Officer/Field Assistant to break open the locks, if any present on the property at the time of delivery of property and deliver the property. The Court below had rightly granted police aid for peaceful delivery of the property. There are no merits in the revisions and the revision petitions, which are intended to drag on the proceedings, are liable for dismissal.

7. I have bestowed my attention to the facts and the submissions. The Judgment Debtors are bound by the decree for eviction that has become final is undeniable. Further, after over-ruling the objections of the Judgment Debtors, the Court below and this Court had concurrently held that the Executing Court is competent to execute the decree. When a delivery warrant was issued to the Field Assistant of the Court, he could not deliver the property, as he had found that the property was kept under lock at the time of his visit to the property on 03.07.2003. Therefore, the Decree Holder was constrained to file two execution applications viz., EA Nos.325 and 326 of 2003 for breaking open the locks put on the property and for grant of police aid for peaceful delivery of the property.

8. In deed, The Judgment Debtors had filed counters in the above said petitions denying the allegations and had *inter alia* contended as follows: "The DHr had managed to get a false endorsement on the warrant entrusted to the Field Assistant of the Court with ulterior motives. The petitions are vexatious. The JDs are in possession of the property since several decades. The Field Assistant never went to the EP schedule property. The property is not identifiable on the land."

9. On the date of hearing i.e., on 04.08.2014, submissions were made in the two applications before the Court below by the learned counsel for the

DHr. But, no submissions were made on behalf of the JDrs, though counters are filed with the above stated averments. The learned counsel engaged by JDrs 3 to 10 filed an application for adjournment and the same was dismissed by the Court below. Ultimately, having considered pleadings of the DHr and the submissions made on its behalf and also considering the averments in the counters of the JDrs, the Court below had passed orders allowing both the petitions. As rightly contended, the JDrs cannot obstruct the delivery of the EP schedule property, as they are bound under facts and in law to honour the decree that was granted against them. The EP is pending before the Court below since more than a decade. Despite the orders of this Court made earlier, the Decree Holder is not able to realize the fruits of the decree. Even now, the learned counsel for the JDrs is unable to show any reason, much less valid reason, for stalling or halting the delivery of the Decree schedule property. The law is well settled that the executing Court cannot go behind the Decree. The JDrs could not show their right to remain in possession of the Decree/EP schedule property any longer. Since, the JDrs admittedly could not show any tenable objections or grounds for stalling or halting the delivery of the property as per the terms of the Decree, this Court finds that there is no merit in the contentions of the JDrs.

10. For the reasons afore stated and since the Court below had passed the well reasoned orders after having considered the counter averments of the JDrs and as the JDrs could not show even a semblance of right to remain in possession any longer and as they are bound to honour the decree, which has become final, this Court finds that there are no merits in these revisions and that the orders of the Court below, which are justified, do not call for any interference.

11. In the result, both the Civil Revision Petitions are dismissed. The Court below on production of a copy of this order may re-entrust the delivery warrant to the Officer of the Court/Field Assistant of the Court for delivery of the EP Schedule property to the DHr with police aid after breaking open the locks, if any, put on the property. No costs.

Miscellaneous petitions pending, if any, in these Civil Revision Petitions shall stand closed.

M.SEETHARAMA MURTI, J

Date: 16.06.2016
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