

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4288 of 2015

ORDER:

This revision under Section 115 of the Code of Civil Procedure, 1908, by the 3rd defendant-3rd JDr is directed against the order dated 31.07.2015 of the learned Principal Junior Civil Judge, Husnabad, passed in EP.No.1 of 2005 in OS.No.11 of 2001.

I have heard the submissions of Sri K.S. Murthy, learned counsel for the petitioner-3rd JDr ('the 3rd JDr', for brevity) and of Sri S. Chandra Mohan Reddy, learned counsel for the 1st plaintiff-DHr ('the DHr', for brevity). Respondents 2 to 5 are stated to be not necessary parties. I have perused the material record.

After the decree in the aforementioned suit has become final, the DHr filed the Execution Petition for eviction of the Judgment Debtors from the E.P. 'A' schedule property and recovery of possession of the same and also for attachment of movable property mentioned in 'B' schedule of the Execution Petition and for realization of the costs of the decree. On merits, the executing Court passed the order, which is impugned in this revision.

During pendency of this revision, the E.P schedule property was delivered to the DHr as per the warrant issued by the executing Court and certified copies of the delivery proceedings and the delivery receipt dated 18.08.2015 are produced before this Court by the learned counsel for the DHr. The said facts are not in dispute.

In the light of this subsequent development, it is fairly stated that the cause in this revision does not survive for adjudication and therefore the CRP has to be disposed of on that ground alone. However, the learned counsel for the 3rd JDr would submit that after the EP has been filed an attempt has been made twice for amendment of the plaint as well as the decree schedule as in

the decree schedule property there are some structures besides 300 Citrus trees and that the petitions filed by the Dhr for amendment of the plaint as well as the decree were dismissed by the executing Court and eventually the property was delivered and that in view of this development, the 3rd JDr filed an application for setting aside the *ex parte* decree and therefore liberty may be reserved to him to prosecute the said petition while disposing of this revision petition as infructuous. It is also his submission that the 3rd JDr is having title to the property and that he was shown as a tenant in the property and that the *ex parte* decree has come to be passed as he was not residing in India at that time.

Per contra, the learned counsel for the Dhr would submit that there is no dispute about the identity of the decree schedule property and the dispute is only about the unwanted trees, which have grown in the schedule property during the pendency of the proceedings, and that the property within the EP schedule property boundaries was only delivered and that as on today, as per the knowledge of the Dhr, no application filed for setting aside the *ex parte* decree is pending and that therefore no liberty need be given to the 3rd JDr as sought for before this Court.

Now the short question is as to whether any liberty shall be reserved to the 3rd JDr for pursuing the legal remedy. It is needless to state whether this Court, by a specific observation, reserves such liberty or not, the party who is entitled to pursue legal remedies is always entitled to do so, provided the law permits. Hence, in the considered view of this Court, the revision petition can be disposed of with appropriate directions.

Accordingly, recording the submissions that the EP schedule property was already delivered by the executing Court and that no cause survives for adjudication in this revision, the Civil Revision Petition is disposed of as infructuous. Needless to observe that it is open to the 3rd JDr to pursue the legal remedies, which the law permits.

Miscellaneous petitions, if any pending, shall stand closed. No order as to costs.

02.12.2016
Vjl

M. SEETHARAMA MURTI, J

