

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRP.No.4602 of 2016

ORDER:

This revision, filed under Section 115 of the Code of Civil Procedure, challenges the order dated 29.08.2016 passed by the Court of the Senior Civil Judge, Penugonda, Ananthapur District in E.P.No.4/2009 in O.S.No.50/2003.

2. The Judgment-debtors 1 and 2 in the above mentioned E.P are the petitioners in the present revision.

3. Heard.

4. The respondents 1 to 3 herein instituted O.S.No.50/2003 against the petitioners and 4 others for declaration of title and possession of the schedule properties. The learned Senior Civil Judge decreed the suit on 17.02.2007. Thereafter, the Decree-holders filed the present E.P.No.4/2009 praying for enforcement of the decree and delivery of 'A' Scheduled Property and for attachment of 'B' Scheduled Property and for realisation of the amount.

5. The petitioners herein filed counter before the executing Court opposing the execution petition, stating *inter alia*, that they filed an appeal before the Court of the Additional District Judge with an application to condone the delay in filing the said appeal. The learned Senior Civil Judge, by way of an order dated 29.08.2016, allowed E.P.4/2009 ordering delivery of the scheduled properties and to attach 'B' Schedule property. The said order is under challenge in the present revision.

6. According to the learned counsel for the petitioners, the questioned order is erroneous, contrary to law and opposed to the provisions of Order 21 Rule 35 of the Code of Civil Procedure. It is further submitted by the learned counsel for the petitioners that the petitioners herein have already filed an

appeal against the decree on the file of the Court of the Additional District Judge, Hindupur with a delay application and the said delay occurred in view of the mistake crept in the decree. It is further submitted by the learned counsel that the condone delay application was heard by the learned District Judge and it was reserved. It is further submitted that due to the mistake of the Court in typing the dates, the petitioners had to get the decree amended, which eventually resulted in occurrence of delay in filing the appeal.

7. On the contrary, it is submitted by the learned counsel for the respondent/Decree-holders that there is no illegality nor there exists any material infirmity in the impugned order, and in the absence of the same, the order impugned is not amenable for any correction by this Court under Section 115 of the Code of Civil Procedure. It is also submitted that the suit was decreed as long back as on 17.02.2007 i.e., approximately a decade back, and as such, the decree-holders cannot be asked not to enjoy fruits of the decree. It is further submitted by the learned counsel for the respondents that in the absence of any stay granted by the appellate Court, the petitioners herein are not entitled for any relief.

8. The material available before the Court clearly reveals that the suit was instituted in the year 2003 and it was decreed on 17.02.2007 and seeking enforcement of the said decree, petitioners herein/decree-holders filed E.P.No.4/2009. Except stating that the Judgment-Debtors filed appeal before the Additional District Judge, Hindupur with condone delay petition, no other information is forthcoming as to when the amendment application was filed and when the same was allowed and when the respondents filed their appeal before the appellate Court. Admittedly, after a lapse of approximately four years from the date of decree, the appeal appears to have been filed by the petitioners before the learned Additional District Judge, Ananthapur. In

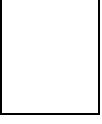
fact, the Court below took into consideration all these aspects and also considered the provisions of Order 41 Rule 5 of the Code of Civil Procedure and negated the case of the petitioners herein and allowed E.P. Therefore, the said findings recorded by the learned Senior Civil Judge cannot be said to be erroneous and contrary to law. In view of the reasons assigned by the learned Senior Civil Judge in the impugned order, this Court does not find any reason to meddle with the said order.

9. For the aforesaid reasons, the Civil Revision Petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

Date:23.12.2016
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A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



CRP.No.4602 of 2016

Dated 23rd December, 2016

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