

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4666 of 2017

ORDER :

This Revision is filed by the petitioners assailing the order dt.06-09-2017 in E.A.No.186 of 2017 in E.P.No.73 of 2006 in O.S.No.59 of 1980 of the Senior Civil Court, Narsapuram.

2. The said suit was filed for recovery of possession by 1st respondent. The suit was decreed on 22-10-1987 and A.S.No.35 of 1988 filed against it was dismissed on 02-01-1998 and L.P.A.No.80 of 1998 was also dismissed on 06-07-2006.

3. In the meantime, the 1st respondent died. On the strength of the Will executed by 1st respondent, the 3rd respondent came on record on the basis of affidavits given by 1st respondent's wife, another son and daughters of 1st respondent. This was not challenged by petitioners.

4. Petitioners then filed E.A.No.186 of 2017 under Section 47 C.P.C. after delivery order was passed on 17-08-2017 in the E.P. to recall the said delivery order.

5. In that application, they alleged for the first time that the 3rd respondent had no right to take delivery of the E.P. schedule property since he had minor son by name Abhishek; there was a registered partition deed dt.10-08-2004 wherein the said Abhishek got 138.3 sq. yds, which is part of the E.P. schedule property, which was ordered to be delivered; and so, the 3rd respondent/2nd D.Hr. had no right to take delivery of the E.P. schedule property.

6. The 3rd respondent filed counter-affidavit contending that the partition deed itself shows that Abhishek would get the property after delivery of the entire E.P. schedule property and at the end of the litigation; the *inter se* dispute among respondents cannot be adjudicated in the Execution proceedings since such a question does not pertain to the execution and they will be decided in a separate suit; and one of the legal representatives can execute the decree. He contended that the issue raised by the petitioners is outside the scope of Section 47 C.P.C. and that the 3rd respondent/2nd D.Hr. will take delivery of the property subject to the rights of the rightful claimant which may be determined in any subsequent suit; and the petitioners have no right to raise any objection for delivery of the property to frustrate the execution of the decree, and they cannot plead the rights of a stranger or third party.

7. By order dt.06-09-2017, the Court below dismissed E.A.No.186 of 2017. It held that if anybody is aggrieved by the delivery of property, it is the son of the 2nd D.Hr/ Abhishek; petitioners are not the aggrieved persons; and they cannot plead his case when the decree has been confirmed by this Court in L.P.A.No.80 of 1998. It held that if the 3rd respondent obtained the entire extent of the E.P. schedule property, his son Abhishek may take delivery of the property from him by way of necessary proceedings in accordance with law, if he does not deliver his property to his son as per his entitlement in the partition deed. It observed that if the contention of petitioners is accepted and delivery is not given to 3rd respondent, it would entitle

the petitioners to continue in possession contrary to the decree which has been upheld by the High Court. It held that the rights under the partition deed can be exercised according to law among the parties to the partition deed and the son of 3rd respondent will have his own remedy to get the extent of the property allotted to him in the said partition. It observed that there is no recital in the partition deed that the son of 3rd respondent should take delivery of the property only from the petitioners/J.Drs. and it is clearly mentioned in the partition deed Ex.A-1 that possession will be delivered depending upon the verdict in L.P.A.No.80 of 1998. It held that after the said litigation ended, then only after the 3rd respondent takes delivery of the property, his son will get the property. It held that one of the legal heirs is capable of getting the decree executed and taking the estate of the deceased decree holders subject to the rights of the rightful claimants which may be determined in any subsequent suit.

8. Assailing the same, this Revision is filed.

9. Learned counsel for petitioners reiterated that the petitioners are entitled to object to the execution of the decree on the ground that the 3rd respondent cannot get the entire E.P. schedule property in the light of the terms of the partition deed under which the 3rd respondent's son Abhishek would also get 138.3 sq. yds, which is part of the E.P. schedule property.

10. I am unable to accept the said contention. As rightly pointed out by the trial Court, the 3rd respondent was accepted by the

Executing court as sole legal heir of the deceased decree holder. Therefore he can certainly maintain the Execution Petition for execution of the decree of delivery of possession. Any *inter se* dispute between the 3rd respondent and his son, who may claim a share on the basis of a registered partition deed Ex.A-1 dt.10-08-2004 will not be a dispute between the parties to the present suit and the remedy of the said individual is to recover his share under the partition deed by separate proceedings. This is because the possession which the 3rd respondent will obtain in this E.P. will always be subject to the rights of the persons like his son Abhishek and 3rd respondent's son can work out his remedies in a suit.

11. Therefore I do not find error of jurisdiction exercised by the trial Court warranting interference by this Court under Section 115 C.P.C.

12. The Civil Revision Petition is accordingly dismissed at the stage of admission. No costs.

13. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 08-09-2017

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