

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1954 OF 2017

ORDER:

This petition is filed under Section 115 of C.P.C, challenging the order in C.M.A.No.37 of 2013 passed by the XXVII Additional Chief Judge, City Civil Court, Secunderabad, dated 14.10.2016 confirming the order in E.A.No.181 of 2013 in E.P.No.95 of 2004 in O.S.No.533 of 1983 dated 21.10.2013 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, dismissing the application filed under Order XXI Rules 99 to 101 r/w Section 151 C.P.C.

The petitioner filed an application under Order XXI Rule 99 to 101 r/w Section 151 C.P.C claiming that he entered into agreement of sale with the second respondent on 25.06.1981 to purchase schedule property for total consideration of Rs.50,000/- out of which he paid a sum of Rs.20,000/- towards sale consideration and the balance sale consideration of Rs.30,000/- was agreed to be paid at the time of registration after discharging the debt due to the South Central Railway. Since father of respondents failed to execute the registered sale deed, despite repeated demands, the petitioner filed O.S.No.417 of 2007 on the file of Principal Rent Controller-cum-XVII Junior Civil Judge, Secunderabad, seeking specific performance of agreement of sale dated 25.06.1981 and supplementary agreement dated 20.04.2000. But, the said suit was dismissed on 22.09.2010. Later, the matter was carried by way of appeal in ASSR No.5473 of

2011, which is at pre-registration stage, as appeal was filed along with delay condonation petition in I.A.No.2671 of 2012.

The respondents having obtained decree for specific performance, initiated execution proceedings, both for execution of registered sale deed and for delivery of possession of the property. Whereas, the petitioner claiming to be in possession of the schedule property, in view of the supplementary agreement, prosecuted in the civil proceedings before the competent courts, which are pending on the date of filing the petition and therefore requested the Court to determine his right and dismiss the petition filed for delivery of possession of the property.

The respondents 1 to 5 filed counter, contending that the question of petitioner's dispossession does not arise as the petitioner was never in possession of the property and the questions relating to rights of the petitioner is the subject matter of the suit pending before the competent court and the same cannot be decided at this stage in the present petition and prayed for dismissal of the petition.

During enquiry, the petitioner/appellant was examined as P.W.1 and marked Exs.P-1 to P-12.

On behalf of the respondents, none were examined.

Upon hearing argument, the Executing Court dismissed the execution application recording its own reasons. Aggrieved by the order passed by the Appellate Court in C.M.A.No.37 of 2013 dated 14.10.2016, the present revision petition is filed.

It is an undisputed fact that the father of respondents 2 to 5 filed O.S.No.1533 of 1983 and obtained decree for specific

performance and he died during pendency of the appeal and the respondents obtained decree, which is confirmed in appeal. Thereafter, the petitioner filed E.P.No.196 of 2014 under Order XXI Rules 32 & 35 r/w Section 29 of Specific Relief Act to direct the respondents to deliver vacant possession of the property to the decree holder, which is described in the schedule annexed to the suit and annexed to the execution petition. At that stage, the petitioner filed petition under E.A.No.181 of 2013 under Order XXI Rules 99 to 101 r/w 151 C.P.C, resisting or obstructing the delivery of possession of the property. The basis for claim is agreement and supplementary agreement, which is the subject matter of the suit O.S.No.417 of 2007 on the file of the Principal Rent Controller-cum-XVII Junior Civil Judge, Secunderabad.

It is also an undisputed fact that the suit was dismissed negating relief of specific performance and the appeal was preferred. But, it was not brought to the notice of this Court by the learned counsel for the petitioner that the second appeal was also dismissed on 13.06.2017 in S.A.No.327 of 2017.

The petitioner purchased the property under agreement of sale dated 25.06.1981, which is marked as Ex.P-1 and supplementary agreement dated 20.04.2000. The petitioner though tried to enforce this agreement by filing suit for specific performance, he was unsuccessful throughout. In none of the documents i.e. Exs.P-1 & P-2, there is no recital about delivery of possession to the petitioner and they are only possessory agreements. But, now, the petitioner is claiming that he is in possession of the property. Even otherwise, possession is not

traced, in Exs.P-1 & P-2. More so, the respondents obtained decree for specific performance which is inclusive of delivery of possession. Therefore, ordering delivery of possession is in accordance with law. Hence, the finding of the Trial Court needs no interference, since it is free from any legal infirmities, warranting interference of this Court by exercising power under Section 115 C.P.C.

The power of this Court under Section 115 C.P.C is limited and this Court can exercise such power and call for records when the Trial Court failed to exercise its jurisdiction that is vested on it or exercised the jurisdiction illegally and irregularly. But, in the present case, there is nothing to show that the Executing Court exercised jurisdiction which is not vested or failed to exercise jurisdiction vested on it or exercised its jurisdiction illegally or irregularly. Therefore, I find no illegality or infirmity in the order passed by the Trial Court, warranting interference by this Court.

In the result, the civil revision petition is dismissed, confirming the order in C.M.A.No.37 of 2013 dated 14.10.2016 passed by the XXVII Additional Chief Judge, City Civil Court, Secunderabad.

Consequently, miscellaneous petitions pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.07.2017

SP