

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2317 OF 2013

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure (for short, 'C.P.C.') challenging the order dated 12-04-2013 in E.A.No. 1297 of 2000 in E.P.No. 972 of 1999 in O.S.No. 402 of 1989 on the file of the Court of I Additional Junior Civil Judge, Guntur (for short, 'the executing Court'), whereby the executing Court dismissed the application filed under Order 21 Rules 97, 98 and 101 of C.P.C.

The petitioner allegedly purchased the property initially under an agreement of sale dated 09-02-1989 for Rs.28,000/- and paid Rs.22,000/- on the date of execution of agreement of sale as advance while agreeing to pay the balance of Rs.6,000/- at the time of registration. Accordingly, the petitioner paid the balance sale consideration and obtained registered sale deed on 11-11-1990. By the time of obtaining registered sale deed, respondent No. 1 filed O.S.No. 402 of 1989 for specific performance based on agreement of sale dated 29-10-1986, obtained decree for specific performance and filed an execution petition for delivery of possession of the property. When the executing Court ordered delivery of possession of the property, the petitioner filed an application under Order 21 Rules 97, 98 and 101 of C.P.C. resisting or obstructing delivery of possession of the property on the ground that he purchased the property. The executing Court dismissed the petition after full-fledged inquiry.

During hearing learned counsel, representing Sri Syed Khader Mastan, learned counsel for the petitioners, reiterated the contentions raised before the executing Court while contending that the petitioner is a *bona fide* purchaser without notice of prior agreement and pending suit, he is therefore entitled to

claim protection under Section 19 of the Specific Relief Act, 1963, but the executing Court did not consider the objection or resistance of delivery of the property and prayed to set aside the order passed by the executing Court allowing the application.

Whereas learned counsel for respondent No. 1 would contend that no revision under Section 115 of C.P.C. is maintainable since the decree in petition under Order 21 Rules 97, 98 and 101 of C.P.C. is an appeal decree and appealable in view of Rule 103 of Order 21 of C.P.C. besides raising other contentions like vitiating the transaction by Section 52 of the Transfer of Property Act, 1882, *etc.*,

In view of the specific ground regarding maintainability of the revision, this Court has to decide the maintainability without touching other aspects as to the merits of the claim of the petitioners.

Undisputedly petitioner No. 1 filed petition under Order 21 Rules 97, 98 and 101 of C.P.C. before the executing Court obstructing or resisting delivery of possession of the property on the ground that he purchased the property under registered sale deed during pendency of the suit and obtained an agreement prior to filing of the suit but subsequent to the agreement obtained by respondent No. 1 which is the subject matter of the suit for specific performance. According to Order 21 Rule 103 of C.P.C., when an application has been adjudicated upon under Rule 98 or 100 of C.P.C., the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise, as if it were a decree. Thus, the order under challenge would fall within the definition of decree under Section 2 (2) of C.P.C. and it is appealable order but not revisionable order under Section 115 of C.P.C. Learned counsel for the petitioners though contended that the petition is filed under Article 227 of the Constitution of India, when an appeal is permitted against the order passed

under Order 21 Rule 98 of C.P.C., revision under Article 227 of the Constitution of India or Section 115 of C.P.C. is not maintainable. Therefore, on this short ground, the petition is dismissed. However, it is left open to the petitioners to redress their claim in appropriate proceedings.

The civil revision petition is accordingly dismissed giving liberty to the petitioners to redress their claim in appropriate proceedings. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 28-06-2017.

JSK

