

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1171 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order dated 17.01.2017 passed in E.P.No.79 of 2010 in O.S.No.138 of 2004 on the file of the Additional Senior Civil Judge, Tirupati, wherein the trial Court ordered issuing a delivery warrant to deliver the E.P. Schedule Property to the decree holder.

2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in E.P.

3) The decree holders filed O.S.No.138 of 2014 seeking delivery of possession of schedule property. The same was decreed on 13.08.2009. Since the judgment debtors failed to deliver the property and caused obstruction E.P.No.79 of 2010 came to be filed. In the course of trial, PW.1 examined on behalf of the decree holder and judgment debtor No.1 examined himself as RW.1 and also got marked Exs.R1 to R3. For the reasons best known the decree holder did not cross examine RW.1, but however he advanced arguments. It is stated that judgment debtor No.1 counsel failed to advance any arguments, basing on the evidence available on record and the arguments advanced by the decree holder and also taking into consideration the report of

the Field Assistant dated 01.04.2010, the trial Court allowed the E.P. and issued delivery warrant to deliver the E.P. schedule property to the decree holder. It is further held that if any obstruction caused by the judgment debtor and his supporters, decree holder is at liberty to get police aid by filing a separate application for police aid. The same is challenged by way of filing this Civil Revision Petition under Section 115 of C.P.C.

4) Heard Sri S.Subba Reddy, learned counsel for the petitioner and Sri G.Venkat Reddy, learned counsel for the respondent.

5) Learned counsel for the petitioner while commenting upon the procedure which is followed by the trial Court in allowing the E.P. submits that the findings given therein are contrary to the report of the Field Assistant. There is no dispute that the Field Assistant was appointed in the year 2010 to execute the warrant. Pursuant thereto he proceeded to the schedule property to execute the warrant and find variation in east and south boundaries of 'A' and 'B' schedule property. In view of the above, it is urged that ordering of delivery of the property is illegal and improper. Though the trial Court referred to the report of the Field Assistant dated 01.04.2010, but the variation referred to earlier are not mentioned in the order except stating that

one Kannaiah and others, who were residing in the house situated in the E.P. schedule property refused to vacate the house and cause obstruction for delivery of the property by locking the door and moving away. Since the boundaries on ground are not matching with the schedule property, this Court is of the view that the trial Court ought to have allowed the petition straight away without answering the observations made by the Field Assistant in his report. Hence, the order under challenge is *set aside*.

6) Accordingly, the C.R.P. is disposed of and the matter is remanded back to the trial Court to give finding on the observation made by the Field Assistant with regard to the boundaries of the schedule properties.

7) There shall be no order as to costs. Consequently, the Miscellaneous Petitions pending if any shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

21.06.2017

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