

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.65 of 2017

ORDER:

This petition, under Section 115 of the Civil Procedure Code, is filed by the petitioner – judgment debtor in E.A.No.290 of 2012 in E.P.No.62 of 2012 in O.S.No.2885 of 2006 on the file IX Junior Civil Judge, City Civil Court, Hyderabad, challenging the order dated 07.12.2016, dismissing the application to declare that the decree is not executable.

Respondent filed a suit for mandatory injunction and obtained a decree dated 24.02.2009 (compromise decree) in terms of compromise between the parties filed before the Court on 24.02.2009. As the terms of decree were not enforced by the petitioner – judgment debtor, respondent – decree holder filed execution petition.

The claim is resisted by the petitioner – judgment debtor on the ground that she is entitled to claim easementary right of pathway for ingress and egress and, on account of the decree, she is deprived to enjoy the right of easement in terms of sale deed executed by respondent – decree holder in favour of petitioner – Judgment debtor. Therefore, the respondent – decree holder is not entitled to claim relief under Order XXI Rule 32(5) CPC. But, before the Executing Court, both the parties did not adduce evidence in support of their claim. Therefore, the Court passed order under Order XXI Rule 32(5)

CPC directing the bailiff to execute the warrant in terms of the decree. The application was filed to declare the decree is not executable.

The order is now challenged, in the present E.A, reiterating various contentions mainly contending that the decree was obtained by playing fraud and filed suit O.S.No.394 of 2013, for cancellation of compromise decree in O.S.No.2885 of 2006, which is the subject matter of execution proceedings but the suit was dismissed; moreover, the Trial Court did not consider the specific plea of easementary right in terms of sale deed executed by respondent – decree holder in favour of petitioner – judgment debtor, and committed an error in ordering execution, under Order XXI Rule 32 (5) CPC, for removal of constructions and directing the bailiff to execute the warrant.

During hearing, learned counsel for the petitioner mainly contended that the claim of the petitioner is barred by limitation as decree was passed on 24.02.2009 whereas E.P. was filed on 09.04.2012, beyond three years and placed reliance on the judgment of this Court in **Y.Lakshamma v. G.Thyagaraju**¹ in support of his contention.

The next ground urged before this Court is that the compromise decree is in violation of the easementary right provided to the petitioner – judgment debtor by express grant in the sale deed, therefore, the decree is not executable

¹ 2011(3) ALT 77

against the petitioner contrary to the terms of sale deed and prayed to set aside the order under challenge passed by the Executing Court in E.A.No.290 of 2012 in E.P.No.62 of 2012 in O.S.No.2885 of 2006 dated 07.12.2016.

Learned Counsel for the respondent contended that the limitation starts from the date of enforceability of the decree or from the date of decree, as such, E.P. is within time as per Article 135 of the Limitation Act, 1963. He also contended that this Court cannot go beyond the decree, therefore, the alleged deprivation of easementary right of the petitioner – judgment debtor is irrelevant, when both the parties agreed to pass decree in terms of compromise dated 24.02.2009.

Considering rival contentions, the points that arise for consideration are:

- i. Whether the execution petition is within limitation as per Article 135 of the Limitation Act?
- ii. Whether deprivation of right of easement conferred on petitioner – judgment debtor by express grant i.e. sale deed, dated 21.04.1981, is a ground to deny execution of decree for mandatory injunction?

POINT NO.1

The first and foremost ground raised before this Court is that the claim of the petitioner is barred by limitation. Article 135 of the schedule to the Limitation Act, 1963 is relevant to decide the controversy, and it is extracted hereunder:

Art. No.	Description of Appeal	Period of Limitation	Time from which period begins to run
135	For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or whether a date is fixed for performance, such date.

A bare reading of Article 135 of the Limitation Act, limitation of three years commences from the date of decree or where the date is fixed for performance and such date is commencement of limitation. Here, as per the terms of compromise, the petitioner – judgment debtor agreed to make arrangements to construct an additional wall or pillars abutting the staircase and shall provide independent pillars for supporting the staircase so that the beam which is projecting inside the area of the plaintiff could be dismantled and the wall inside which was constructed by the defendant could be removed to restore the area of plaintiff. It is also agreed in clause 3 that the plaintiff within two years shall not remove the beam or wall inside, because removal of them now would lose support for the staircase and the staircase would fall down. Thus, the limitation would commence immediately after expiry of two years from the date of decree. The date for performance expired on 24.02.2011 i.e. expiry of two years period from the compromise dated 24.02.2009. Therefore, the contention of the petitioner – judgment debtor does not stand to legal scrutiny as the date is fixed for performance of decree in terms of compromise postponing its enforcement. Though the learned counsel for the petitioner placed reliance on the judgment of this Court in **Y.Lakshamma** (1 supra), this Court only discussed the starting point of limitation basing on the first part of column 3 of Article 135 of the schedule of the Limitation Act but not under the second part i.e, the date

fixed for performance. Hence, the principle laid down by this Court is of no assistance to the petitioner – judgment debtor to get the order reversed or set aside, while, exercising jurisdiction under Article 227 of the Constitution of India.

POINT NO.2

The second ground raised before this Court is that, on account of compromise decree, the petitioner is deprived of enjoyment of the easementary right of ingress and egress i.e. passage, in terms of sale deed dated 21.04.1981 executed by respondent – decree holder in favour of petitioner – judgment debtor.

The parties are conscious about their rights in the property, despite it, the petitioner and respondent (judgment debtor and decree holder) filed memorandum of compromise dated 24.02.2009 before the Trial Court in the suit and invited a compromise decree. It is settled principle of law that the Executing Court cannot go beyond the decree **(M/S. Brakewel Automotive Components (India) Private Limited v. P.R. Selvam Alagappan²)**. In view of the principle, the alleged deprivation of enjoyment of right of easement i.e. passage cannot be considered when the court passed decree and, at best, from the date of the Court order, is to implement the decree.

² AIR 2017 SC 1577

Learned counsel for the petitioner has drawn the attention of this Court to para 2 of the supporting affidavit filed in the E.P. which reads as under:

“I have sold the land admeasuring to an extent of 100 sq yards in H.No.12-1-331/A/15/1 to the respondent, apart from the 100 sq. yards, the steps wall have to be demolished now which are lies in my room of my premises which is belongs to me, during the life time of my sister, Smt Navaneela can enjoy the same which belongs to me in case the respondent my sister disposes the said H.No.12-1-331/A/15/2 to any other person by way of sale, gift, will or in any manner the area of the land value have to be paid to me. The respondent is the owner of 100 sq. yards rights only.”

(reproduced verbatim)

At best, the allegations, made in para 2 of the affidavit, show that she is entitled to use the disputed property for her ingress and egress creating a right of easement of way and subject to payment of consideration in the event of sale to the third party and she did not alienate and enjoying the property.

Easement, as defined, under Section 4 of the Easement Act, is extracted below:

An easement is a right which the owner or occupier of certain land possess, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Here the petitioner – judgment debtor raised constructions contrary to the right conferred by way of easement i.e. ingress or egress or passage. Right of easement of way, at the time of sale, is an easement by necessity as defined under Section 13 of the Easement Act. However, the decree, for removal of constructions in the site, allowed to be

enjoyed by the respondent as passage creating an easement, the petitioner is not entitled to raise constructions. In such case, enforcement of decree for mandatory injunction cannot be found fault, but the petitioner is not entitled to resist the execution under Order XXI Rule 32(5) CPC. Therefore, on this ground, the execution petition cannot be dismissed. The Executing Court did pass an order in accordance with law to enforce the decree. Therefore, the process of the Court entrusting warrant to the bailiff is free from warranting interference by this Court. The Court below rightly dismissed the application to declare E.P. as not executable.

The Civil Revision Petition is devoid of merits and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:14.06.2017
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