

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.635 OF 2017

ORDER:

This petition is filed under Section 115 C.P.C, challenging the order in E.P.No.193 of 2016 in O.S.No.146 of 1987 dated 01.12.2016 passed by the Principal Senior Civil Judge, Kakinada.

In a connected civil revision petition filed by same parties and in similar set of circumstances, this Court passed an order in C.R.P.No.358 of 2017 dated 07.07.2017, the operative portion of which reads as follows:

“Undisputedly, the decree attained finality. But, there is a little discrepancy in the schedule annexed to the execution petition with regard to extent only. Whereas, the boundaries and measurements remained as it is. When there is a discrepancy in the extent, the boundaries and measurements will prevail and therefore, the discrepancy will not come in the way of ordering delivery. That apart, the schedule annexed to the Power of Attorney is irrelevant, since no order was passed recognising Sri Venkateswara Rao as an agent of the petitioner/decreed holder and on that ground, the order cannot be set-aside. The last contention urged before this Court is that, no notice was ordered before ordering delivery under Order XXI Rule 35 of Civil Procedure Code without any legal basis, since no notice is contemplated under Order XXI Rule 35 of Civil Procedure Code, before ordering delivery of possession. Therefore, none of the objections raised by the learned counsel are substantiated and this Court cannot interfere with the order while exercising power under Section 115 C.P.C, since the power of this Court under Section 115 C.P.C is limited. 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 view of the rival contentions, I find that it is a fit case to direct the Executing Court to confine delivery of property to the schedule within the boundaries with measurements as per schedule appended to the decree.”

Let there be a similar order even in this case.

In the result, the civil revision petition is disposed of directing the Executing Court to confine delivery of property to the schedule within the boundaries with measurements as per schedule appended to the decree.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.07.2017

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