

HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.2413 of 2017

ORDER :

This revision filed under Section 115 of the Code of Civil Procedure, 1908, by the claimant in E.A.No.24 of 2016 in E.P.No.85 of 2015 in O.S.No.103 of 2014 on the file of the Court of the I-Additional District Judge, Anantapuramu, challenges the order, dated 31.03.2017, passed by the said Court in E.A.No.12 of 2017.

2. Heard Sri M.Mehdi Hussain, learned counsel for the petitioner and Sri M.Karibasaiah, learned counsel for the 1st respondent.

3. O.S.No.103 of 2014 filed by the 1st respondent against the respondents 2 and 3 herein for declaration, possession and mandatory injunction was decreed on 18.02.2015. Seeking enforcement of the said decree, the 1st respondent-decree-holder filed E.P.No.85 of 2015 under Order XXI Rule 11 of the Code of Civil Procedure, seeking demolition of the structures and delivery. The schedule of property as shown in the execution petition which is an extent of 82.78 sq. yards.

4. In the said E.P.No.85 of 2015, the petitioner herein, who is a third party to the suit, filed E.A.No.24 of 2016 under Order XXI Rule 97 read with Section 151 of the Code of Civil Procedure, praying to set aside the E.P. proceedings in respect of schedule of property mentioned in the said E.A.No.24 of 2016, which according to the petitioner is a part of E.P. schedule property. The said E.A.No.24 of 2016 was filed on 10.08.2016. The petitioner herein filed E.A.No.12 of 2017 under Order XIV Rule 2(2)(a) and (b) and Section 151 of

C.P.C. praying the Court below to decide the maintainability of E.P. as a preliminary issue. The said application was resisted by the decree-holder/1st respondent herein. The learned I-Additional District Judge, Anantapur, by way of an order, dated 31.03.2017, dismissed the said application.

5. The present revision calls in question the validity and the legal sustainability of the said order. It is contended by the learned counsel for the petitioner that the questioned order is erroneous, contrary to law and is opposed to the very spirit and object of order XIV Rule 2(2)(a) and (b) and Section 151 of Code of Civil Procedure. It is the further submission of learned counsel for the petitioner that the observations made by the Court below on the maintainability of E.A.No.24 of 2016 while dealing with the present application are unwarranted and the Court below ought not to have made observations on the maintainability of E.A.No.24 of 2016 while deciding the present application pertaining to framing of preliminary issue. It is further submitted by the learned counsel for the petitioner that in the event of the present application being allowed, the same would save the time of the Court. It is further submitted that the Court below did not properly consider the judgment cited on behalf of the petitioner herein. It is also the submission of learned counsel for the petitioner that it is a settled law that an application under Order XXI Rule 97 of C.P.C. is also maintainable by a stranger, who is in possession of the subject property and the findings recorded by the Court below are erroneous. It is also submitted by the learned counsel

for the petitioner that to prevent abuse of process of Court, the Courts have necessary power under Section 151 C.P.C. and the Court below ought to have considered the application under the said provision of law instead of dismissing the same.

6. On the contrary, it is contended by the learned counsel for the 1st respondent-decree-holder that there is no error nor there is any infirmity in the impugned order nor the impugned order suffers from any perversity and in the absence of the same, no interference of this Court is warranted under Section 115 of the C.P.C. It is also the submission of learned counsel that the schedules mentioned in the execution petition and the present claim application are different and distinct and the said ground alone is sufficient for rejection of the applications filed by the petitioner herein. It is further submitted by the learned counsel that the Court below correctly dismissed the application filed by the petitioner herein as the issue requires full-fledged adjudication at the time of consideration of E.A.No.24 of 2016.

7. In the above back ground, now the issue that emerges for consideration of this Court is- “whether the order passed by the Court below, which is impugned in the present revision is sustainable and tenable or whether the same requires any correction by this Court under Section 115 of the Code of Civil Procedure”?

8. The present application admittedly is an application filed under Order XIV Rule 2 (2)(a) and (b) and Section 151 C.P.C. praying the Court below to decide the maintainability of E.P. as a preliminary

issue. The Court below ought not to have gone into maintainability of the E.A.No.24 of 2016 filed by the petitioner under Order XXI Rule 97 of C.P.C. In fact, the Court below ought not to have resorted to such exercise in the present application. In the considered opinion of this Court, the Court below should have restricted its exercise only to the extent of the present application and ought not to have made observations on the application filed under Order XXI Rule 97 of C.P.C. and to the said extent this Court does not approve the exercise undertaken by the Court below. As regards the present application filed under Order XIV Rule 2(2)(a) and (b) C.P.C. for deciding the issue of maintainability of E.P. as preliminary issue, the Court below recorded a categorical finding that the petitioner/claim petitioner would be at liberty to establish the actual conflict in the execution petition by placing evidence in the claim petition. The Court below further found that unless and until enquiry is conducted in the claim petition filed by the petitioner, it would not be possible for the Court to come to a conclusion that whether the E.P. filed by the decree holder is maintainable or not and as such the question of deciding maintainability at this stage would not arise. The said reasons assigned by the learned Judge, in the definite opinion of this Court, are highly reasonable and do not suffer from any infirmity. Therefore, this Court does not find any valid reason to interfere with the order of dismissal of E.A.No.12 of 2017 passed by the learned Judge.

9. For the aforesaid reasons, the revision is dismissed. However, the learned Judge shall decide E.A.No.24 of 2016 uninfluenced by any observations made in impugned order.

10. Miscellaneous Petitions, if any, pending in this revision shall stand closed. No order as to costs.

A.V. SESA SAI, J

30th June 2017

mar

