

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.1320 of 2017

ORDER:

This revision petition, under Section 115 of the Code of Civil Procedure, 1908, by the claim petitioners-3rd parties is filed assailing the docket order, dated 13.12.2016, passed by the learned VII Additional District Judge, Mahabubnagar, which verbatim reads as under: - 'As no attachment to the property, this petition is not maintainable. Hence petition is ordered to be returned.'

2. I have heard the submissions of *Sri K. Sarvabhouna Rao*, learned counsel for the revision petitioners-claim petitioners-3rd parties, at the stage of admission. I have perused the material record.

3. The case of the claim petitioners/ 3rd parties and the submissions made on their behalf, in brief, are as follows:

The 1st respondent-plaintiff-DHr, (hereinafter, 'DHr') in collusion with the 2nd respondent-defendant-JDr (hereinafter, 'JDr') brought a collusive suit, OS.No.80 of 2015, on the file of the Court of the learned VII Additional District Judge, Mahabubnagar, against the defendant/JDr for specific performance of an agreement of sale, dated 25.11.2015, in respect of Ac.02.03 cents and Ac.1.37 cents of dry land in Sy.Nos.345/ 1 and 345/ 2 situate at Amistapur village, Bhoothpur Mandal. In view of the collusion between the said DHr and the defendant/JDr, the defendant/JDr remained *ex parte* and an *ex parte* decree and judgment were obtained by the Plaintiff/ DHr. Thereafter, E.P.No.284 of 2016 was filed and a registered sale deed was obtained by the DHr. Originally, the land in an extent of Ac.2.03 cents in Sy.No.345/ 1 situate within the limits of Amistapur village is an inam and protected tenancy land. One S Ramaiah was the pattadar and one late Narsappa was the protected tenant and the protected tenant was in possession of the said land. The 1st

petitioner and late E. Krishnaiah, the father of the 3rd petitioner, are sons, of the protected tenant and the petitioner no.2 is his daughter in law. Thus, the petitioners are protected tenants as the protected tenancy rights devolved upon them on the death of the original protected tenant and on their continuing in possession and enjoyment of the said land after the death of the said protected tenant, late Narsappa. On the application of the petitioners and after due enquiry, Occupancy Right Certificate (ORC) was also issued in favour of the petitioners 1 and 2 and late E. Krishnaiah, the father of the 3rd petitioner. Being aggrieved of the said ORC in favour of the petitioners 1 and 2 and the said Krishnaiah, the JDr, the 2nd respondent herein, preferred an appeal in file No.F2/ IA/ 10/ 2014 before the Joint Collector, Mahabubnagar, and it is pending. The JDr also claimed that he obtained ORC in respect of the same land in his name in file No.K/ 2730/ 2013. However, the petitioners could obtain an endorsement from RDO, Mahabubnagar, wherein it is stated that no orders have been passed in file No.K/ 2730/ 2013. The RDO has also confirmed and clarified that ORC issued in favour of the petitioners and Krishnaiah in File No.K/ 2730/ 2013, Dated 03.08.2013, is in existence. Pending the said litigation before the revenue authorities, the afore-stated collusive suit was brought by the 1st respondent-DHr against the 2nd respondent-JDr in collusion with each other and a decree and thereafter a sale deed were obtained by the 1st respondent-DHr to defeat the just claim of the petitioners herein. Hence they filed the claim petition under Order XXI Rule 58 of the Code. Without considering the history and the strength of the case of the petitioners, the executing Court, that is, the Court below erroneously returned the petition as not maintainable as there was no attachment of the property. Hence, the present revision is filed.

4. At the hearing, learned counsel for the petitioners fairly stated that the EP is now terminated. He further submitted that pursuant to the sale deed obtained in the EP.No.284 of 2016 in OS.no.80 of 2015 delivery of possession

was not obtained and that the petitioners herein are still continuing in possession of the property for which ORC is granted in their favour. He would further submit that having not obtained delivery of possession pursuant to the sale deed obtained in the execution proceedings, the 1st respondent-DHr is trying to manipulate the revenue records and obtain police aid to disturb the lawful possession of the petitioners over their land and, therefore, a direction may be given to the executing Court/ Court below to number the claim petition after setting aside the order of return passed by it.

5. I have bestowed my attention to the facts and submissions. Admittedly, the petitioners are not parties to the suit for specific performance, which was decreed in favour of the 1st respondent-DHr and against the 2nd respondent-JDr. The EP filed for execution of the sale deed was terminated after the sale deed was executed. According to the petitioners, delivery of possession was not obtained through the Court in the said execution proceedings in EP.no.284 of 2016 in OS.no.80 of 2015. The learned counsel also concedes that Order XXI Rule 58 of the Code has no application, though the returned application was admittedly filed by mentioning the said provision of law. The petitioners assert that they are in possession of their property. In the said circumstances and in view of the admitted fact that the EP is terminated, the question of directing the Court below to entertain the claim petition filed under Order XXI Rule 58 of the Code does not arise for consideration. If the petitioners entertain any apprehensions and visualize that some harm may result in view of the decree and the sale deed that was executed pursuant to the said decree in the execution proceedings, it is for them, if so advised, to file an appropriate application before an appropriate forum or initiate independent proceedings like a suit for protection of their possession over the land, which they are claiming to be in possession pursuant to ORC granted to them. In the light of the above facts, this Court is of the considered view that this revision petition is misconceived and is liable for dismissal.

6. Accordingly, the Civil Revision Petition is dismissed. Needless to state that if the petitioners have any apprehensions that the rights of the petitioners over their property would be in jeopardy, if the decree obtained by the 1st respondent-DHr against the 2nd respondent-JDr and also the sale deed obtained in execution proceedings are allowed to remain without any challenge, they are always at liberty to initiate any legal proceedings, which the law permits, before any appropriate forum, if they are advised so to do. This Court makes it clear that this Court did not examine the merits of anyone of the contentions of the petitioners and made no observations on the merits of the matter.

Pending miscellaneous petitions, if any, in this revision shall stand dismissed. There shall be no order as to costs.

13.04.2017
VJI



M. Seetharama Murthi, J