

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2288 OF 2013

ORDER:

This civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed challenging the order dated 26.04.2013 in E.A. No.213 of 2011 in E.P. No.76 of 2010 in O.S. No.777 of 1984 passed by the Principal Junior Civil Judge, Rajahmundry, East Godavari District.

The plaintiff/ second respondent herein obtained decree for following reliefs:

1. that the right of the plaintiff and second defendant along with first defendant and others in the joint lane shown as 'CDEH' in the plaint plan be and hereby declared;
2. that the first defendant be and hereby restrained from making any constructions in 'CDEH' joint lane shown in the plaint plan;
3. that the first defendant be and hereby directed to remove the 'XY' wall and the super structures if any constructed by her in 'CDEH' lane, within three months from the date of this judgment that is on or before 21.12.2004.

The third relief claimed by the plaintiff/ first respondent herein by way of mandatory injunction for removal of 'XY' wall in 'CDEH' lane, the first defendant/ petitioner herein postponing the performance of particular act of removal till 21.12.2004. Thereafter the plaintiff/ first respondent herein filed execution petition in E.P. No.76 of 2010 claiming removal of 'XY' wall without claiming relief of removal of construction in 'CDEH' joint lane,

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therefore sought relief of amendment by filing a petition in E.A. No.213 of 2011 under Section 151 CPC.

But the counsel for the first defendant/ petitioner herein raised specific contention that the relief prayed in E.A. No.213 of 2011 is barred by time in view of Article 135 of Limitation Act. Upon hearing argument of both the counsel, the executing court considered the application under Section 47 CPC holding that this petition cannot be considered under Section 151 CPC and permitted the petitioner to amend the prayer in the execution petition.

Section 47 CPC deals with questions to be determined with regard to execution, discharge or satisfaction of decree. It appears from Section 47 CPC that such right is available to the judgment debtor or any other person to question the execution, discharge or satisfaction of the decree. The questions arising between the parties to the suit pertaining to those three aspects i.e. execution, discharge or satisfaction of the decree shall alone be determined by the executing decree and not by a separate suit.

Therefore, invoking jurisdiction under Section 47 CPC by the executing court is an error apparent on the face of the record. Hence the order under challenge is liable to be set aside.

In the result, the civil revision petition is allowed setting aside the order dated 26.04.2013 in E.A. No.213 of 2011 in E.P. No.76 of 2010 in O.S. No.777 of 1984, while remanding the matter to the executing court to decide the E.A. No.213 of 2011 afresh after affording reasonable opportunity to both the parties as

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expeditiously as possible, in any event not later than two months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending in this civil revision petition is closed.

M.SATYANARAYANA MURTHY, J

19.06.2017
BV

