

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.1852 of 2017

ORDER:

Questioning the docket order dated 24.03.2017, wherein the application filed by the third party (petitioner herein) under Order XXI Rule 97 read with Section 47 and 151 of CPC was rejected as not maintainable, the present revision is filed.

2. The facts in issue are as under:

It is a case where a third party filed a claim petition to set aside the sale on the ground that the judgment debtor has no salable interest over the property. The said application was returned stating as to how the said petition is maintainable when the sale was already held and confirmed in the main E.P. The petitioner mainly relied upon the judgment in *Buragommula Anjaneyulu Vs. Katragadda Seetha Ramanjaneyulu and others* (2015 4 ALD 749), to show that the said application is maintainable. Distinguishing the facts in the said case with the case on hand, the said application was rejected, as not maintainable. Aggrieved by the same, the present revision came to be filed.

3. Learned counsel for the petitioner mainly submits that the Court below erroneously dismissed the claim petition on the ground that an application under Order XXI Rule 97 is not maintainable. Referring to *Anwarbi v. Pramod D.A.Joshi & Others*¹, learned counsel for the petitioner would contend that the obstructionist in possession can only be dispossessed, in accordance with law. The person in possession of immovable property claiming legal entitlement thereto and obstructing execution of decree for possession, may not be dispossessed, till his rights are adjudicated in

¹ 2000(10) SCC 405

appropriate proceedings. The decree-holder cannot take possession unless such proceedings terminate in his favour. He also relied upon judgment of this Court in *Chalugu Basivi Naidu And Ors. vs Chalugu Bheemi Naidu And Others*², to show that any person in possession of the immovable property under execution was entitled to maintain an application under Order XXI Rule 97 of CPC and the executing Court shall adjudicate the same on merits. He also referred to *Pagidi Padmavathi And Anr. vs Kanala Nagaraju And Three Ors*³ wherein it was held that even a stranger can offer resistance claiming independent title.

4. By an order dated 10.04.2017, this Court while issuing notice before admission, granted interim stay, as prayed for. The docket proceedings would show that the said interim stay has been extended subsequently on different dates.

5. It is to be noted that *Buragommula Anjaneyulu Vs. Katragadda Seetha Ramanjaneyulu and others (supra)* was a case where the petitioner therein was a third party to suit and filed E.A.No.283 of 2014 under Section 47 read with Order XXI Rule 97 of CPC. Alleging that the decree holder visited the plaint schedule property along with a proclainer and threatened to take forcible possession on the basis of decree. He claims that he purchased items 1 and 2 of the plaint schedule property under two separate registered sale deeds and hence he filed EA requesting the Court to determine the right, title and interest of the petitioner therein over the items. From the narration of various events in the judgment, it appears that though EP was ordered, the bailiff could not deliver the possession and as such further directions were issued by the executing Court, directing re-entrustment of

² = 2002(2) ALT 186

³ = 2004(1) ALT 413

delivery warrant to the bailiff. Under those circumstances and taking into consideration various aspects, this Court held as under:

“In my view, therefore, it would be appropriate and would be in the interest of justice to direct the Court below to hear and decide the said claim petition, EA No.283 of 2014, after hearing the petitioner as well as the first respondent and subject to the orders that would be passed by the Court below in the said EA, the Court below shall pass appropriate direction in E.P.No.79 of 2014.”

6. Further, in *Ram Chandra Verma Vs. Shri Jagath Singh Singhi and others*(1996 8 SCC 47), the facts in the case are that the respondents filed a suit for eviction of the tenant on three grounds namely, default, subletting and personal requirement. The said suit was dismissed on August 25, 1975. Thereafter, another suit was instituted on September 25th, 1975 on the same grounds, which was also dismissed. Pending appeal, there was a compromise, pursuant to which, the tenant agreed to surrender one room which was in his possession. When the execution was sought to be undertaken, the tenant resisted the same by filing an application under Order XXI Rule 97 of CPC to remove the obstruction, which was ordered by the Executing Court. On appeal, the High Court dismissed the appeal and thus appeal by special leave was preferred. The question before the Apex Court was whether the appellant was bound by the compromise decree entered into between the parties. Dealing with the same, the Court held that the appellant having found to be in possession, is entitled to obstruct execution defending his illegal dispossession in execution proceedings and he is also independently entitled to file an application under Order XXI Rule 97, claiming his possession.

7. Further, in *Pagidi Padmavathi and another Vs. Kanala Nagaraju and three others* (supra), this Court observed that if an auction purchaser was resisted by any person in obtaining possession of the property, he may make

an application to the Court complaining of such resistance or obstruction and Sub-Section 2 envisages an enquiry or adjudication upon such application.

8. From the above judgments, it is clear that the application under Order XXI Rule 97 would lie at the instance of a person who is not a party to the suit or E.P. But if he is in possession of the property, can claim his right over the same. It is to be noted here that in respect of the very same property another EA No.35 of 2015 came to be filed by one K.Dileep Kumar Reddy stating that he is the major son of the second respondent therein and is adapted to a wayward style of living. A detailed enquiry was conducted to find out as to whether the claim petitioner has any right over the property. In the said E.A. the claim petitioner himself was examined as PW1 and got marked Ex.A1 (certified copy of registered partition deed, dated 04.10.2011). The evidence adduced in the said case would disclose that after obtaining decree in O.S.No.417 of 2011, the mother of the claim petitioner therein filed a suit in O.S.No.74 of 2012 on the file of V Additional District Judge Court. After considering the evidence adduced, the Court therein, held that the judgment debtor (R2) is the only owner to the schedule property. As it cannot be said that the petitioner therein has a right and interest over the claim petition schedule property, the claim petition was dismissed.

9. The counter affidavit filed in the present case would show that the petitioner is an auction purchaser in E.P.113 of 2012 in O.S.no.417 of 2011. On 08.07.2013 the Executive Court issued sale notice to the Judgment Debtor. Thereafter, the wife of Judgment Debtor, son and daughter filed claim petition vide E.A.No.237 of 2013. In the said claim petition, the judgment debtor was arrayed as one of the respondent and was set exparte. The said EA was dismissed for non prosecution. On 05.02.2015, the Court ordered proclamation to sell the same by publishing in Eenadu Telugu daily newspaper. While things stood thus, the son of the judgment debtor, who

was a party to the claim petition, representing through his mother in E.A.No.237 of 2013, once again filed E.A. No.35 of 2015. After keen contest, the said EA was dismissed on merits on 11.03.2016. On 06.06.2016, the decree holder reported ready for sale and the Sub Registrar valued the property around Rs.37 lakhs. Whereas the Field Assistant valued it for Rs.25 lakhs. The Execution Court postponed the same and directed to fix fresh value of the property. On 20.06.2016, the field assistant reported the value of the property as Rs.40 lakhs. The decree holder endorsed no objection to conduct sale subject to mortgage debt and accordingly sale was held on 20.06.2016 in the Court premises along with the bidders. Respondent No.3 was declared to be the highest bidder for Rs.40,30,000/-. It is stated that on the same day, he is said to have deposited 1/4th of the auction amount and foundage charges into the Court as per the procedure contemplated under CPC, while the remaining amount was deposited by way of SBI Challan on 04.07.2016. E.P stood posted for confirmation of the sale to 06.09.2016, which was heard and posted to 07.09.2016 for orders. On 07.09.2016, further time was granted for settlement, as per request of judgment debtor and posted to 26.09.2016. Despite granting time, the judgment debtor has not availed the opportunity and as such the trial Court confirmed the sale on 26.09.2016 and ordered issuance of sale certificate. After confirmation of the sale, the entire amount was deposited on 17.10.2016 and the EP was terminated and the executing Court issued sale certificate 1/2017, by executing sale deed. At that point of time, the petitioner herein filed E.A. under Order XXI Rule 97 seeking stay of further proceedings till the disposal of claim petition filed by her.

10. As stated earlier, the reason for filing of the above E.P. was that she was not aware of the pendency of the claim petition and the proceedings before the Court.

11. As seen from the record, while rejecting the request, the Court held that the judgment debtor has no salable interest over the property and as such the application was rejected, as not maintainable. The averments in the counter affidavit would show that the sale was held and it was confirmed on 26.09.2016.

12. From the above it is clear that the property was sold in an open auction on 20.06.2016. The third respondent deposited 1/4th of the amount on the same day and the balance on 04.07.2016, by way of challan, which was also confirmed by the executing Court on 26.09.2016. Thereafter, sale certificate was issued in favour of respondent No.3. The claim petition filed by the judgment debtor was dismissed for non prosecution and E.A.No.35 of 2015 filed through his son was dismissed on 11.03.2016. Now the judgment debtor through her daughter filed un-numbered EA, that too after termination of E.P., against the orders passed in EA SR No.7021 of 2016 in E.P.No.113 of 2012 in O.S.No.417 of 2011, the Judgment Debtor approached this Court by filing CRP No.4984 of 2016, seeking a direction to the execution Court not to issue sale certificate, but the same was dismissed. As stated earlier, after the dismissal of the revision, the sale certificate 1/2017 was issued in favour of respondent No.3.

13. Having regard to the circumstances stated above; taking into consideration the fact that entire proceedings are over; even the sale certificate was issued; even the revision filed earlier was rejected by this Court and as the EP filed by judgment debtor came to be rejected, this Court is of the view that the petitioner is trying to prolong the matter on one pretext or the other. In fact, the encumbrance certificate, which has been placed on record would show that the property is now in possession of respondent No.3 herein. The material also discloses that respondent No.3 is in possession of the property.

14. In view of the above, the civil revision petition is dismissed. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.08.2017
vhb

