

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1377 OF 2014

ORDER:

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') challenging the order, dated 25-03-2014 in E.P.No.12 of 2008 in O.S.No.91 of 2004 on the file of the Senior Civil Judge, Sompeta, Srikakulam District.

2. Petitioners herein are the J.Drs, where as the respondent herein is the D.Hr.

3. The respondent herein (D.Hr) obtained an *ex parte* decree in O.S.No.91 of 2004 for mandatory injunction and for removal of constructions in the schedule property and for recovery of possession. The respondent herein filed the above Execution Petition under Order XXI Rule 35 CPC to execute the decree removing the constructions in the property and delivery of possession.

4. No oral or documentary evidence was adduced on behalf of the D.Hr. On behalf of the J.Drs, R.Ws. 1 to 3 were examined and Exs.R1 to R8 were marked. The Executing Court after considering both oral and documentary evidence available on record, allowed the E.P. Hence, this revision by the J.Drs.

5. The petitioners herein (J.Drs) appears to have filed an application under Order IX Rule 13 CPC to set aside the *ex parte* decree in GR No.4138 of 2009. As on today, it is not known whether the said application is registered as interlocutory application or not though it is of 9 years old.

6. The main contention of the learned counsel for the petitioners is that when the petitioners filed an

application under Order IX Rule 13 CPC, notice to be given to the petitioners to afford an opportunity to raise the objections regarding the execution of decree under Order XXI Rule 35 CPC and in the absence of any notice, the order passed by the Executing Court is illegal.

7. Order XXI Rule 35 CPC deals with execution of decree for recovery of immovable property. No prior notice is contemplated under Order XXI Rule 35 CPC for execution of decree for recovery of immovable property. According to Rule 35 where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property. Therefore, it is clear from Rule 35 that no notice prior to passing of order for delivery of possession is required to be issued. Hence, basing on the ground that no notice was issued, the order under challenge cannot be set aside.

8. The second ground urged by the learned counsel for the petitioners is that the decree passed by the trial Court is null and void as it lacks inherent jurisdiction. But, the same cannot be decided at this stage in the revision and it is open to the petitioners to challenge the same by filing appropriate application since the Executing Court cannot go beyond the decree except in few circumstances as contemplated under Sections 47 and Order XXI Rules 97, 99 and 101 CPC.

9. Viewed from any angle, I find no illegality in the order passed by the Executing Court to exercise powers under Section 115 CPC since the Executing Court did not

pass the order impugned in this revision exceeding jurisdiction that vested on it or failed to exercise jurisdiction that vested on it. In the absence of any such allegations, the order under challenge cannot be interfered by exercising the powers of review under Section 115 CPC.

10. Accordingly, the Civil Revision Petition is dismissed leaving open the petitioners to agitate their rights by filing separate application before the competent Court. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED:27-07-2017.

Hsd

Note: Issue CC in one week

