

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.1869 OF 2017

O R D E R

This civil revision petition under Section 115 CPC arises out of the docket order dated 20.02.2017 passed by the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in E.A.No.77 of 2015 in E.P.No.40 of 2010. This E.A. was filed by the first respondent herein, being the second plaintiff in O.S.No.195 of 1995 on the file of the learned II Additional Senior Civil Judge, Ranga Reddy District, under Order 21 Rule 16 CPC seeking dismissal of E.P.No.40 of 2010 filed by the petitioner herein. By the order under revision, the executing Court opined to the effect that it was not possible to decide about the relief claimed by the applicant in the E.A. without oral or documentary evidence and accordingly reopened the application for the purpose of allowing both sides to adduce oral and documentary evidence. Aggrieved by this opinion and the consequent move of the executing Court in allowing the applicant in the E.A. to adduce evidence, the petitioner is before this Court.

Heard Sri O.Manohar Reddy, learned counsel for the petitioner, and Sri P.Vedavyas, learned counsel for the first respondent.

O.S.No.195 of 1995 was jointly filed by the petitioner and the first respondent seeking specific performance of the agreement of sale dated 02.01.1995. They sought a direction to defendants 1 to 13 in the suit to execute a registered sale deed in their favour in relation to the suit schedule property, failing which they sought execution of the same through Court. This suit was decreed by the trial Court *vide* judgment dated 25.03.1998. In the body of the judgment, the trial Court observed that the second plaintiff, the first respondent herein,

was a nominal vendee to the agreement and was won over by the defendants subsequently. On appreciation of the oral and documentary evidence, the trial Court held that it was only the first plaintiff, the petitioner herein, who had paid the sale consideration and was entitled to specific performance of the contract. He was accordingly directed to pay the remaining sale consideration within a time frame and thereupon, he was held entitled to put the decree in execution and get the sale deed registered through process of law.

This judgment was tested in appeal before this Court in A.S.Nos.872 and 1113 of 1998 by some of the defendants in the suit. By common judgment dated 29.08.2005, a Division Bench of this Court dismissed both appeals. Significantly, the first respondent herein filed cross-objections in SR No.24008 of 2001 in A.S.No.872 of 1998. Her prayer therein was to pass a decree in her favour also in O.S.No.195 of 1995. In her grounds, she pointed out that the trial Court had erroneously passed a decree exclusively in favour of the first plaintiff in the suit instead of passing the same in favour of both the plaintiffs, thereby ignoring her rights. She further stated that she had been eliminated from enjoying the fruits of the decree though she was a joint purchaser along with the first plaintiff. By a separate order dated 29.08.2005, the Division Bench which dismissed the appeals also dismissed the cross-objections, opining as under:

‘Having regard to the dismissal of the main appeal we do not find any merits in the cross-objections filed. It is always open for the petitioner to seek appropriate remedies available under law.’

This being the factual position obtaining as on the date of institution of the execution proceedings in E.P.No.40 of 2010 by the petitioner herein, being the first plaintiff in the suit, the first

respondent filed E.A.No.77 of 2015 therein seeking dismissal of the execution proceedings, again claiming that she was also a decree holder in O.S.No.195 of 1995 on the file of the learned II Additional Senior Civil Judge, Ranga Reddy District. In the affidavit filed in support thereof, she claimed that she was decree holder No.2 in O.S.No.195 of 1995 but decree holder No.1 therein had filed the E.P. for himself only, omitting her name and without making her a party. The executing Court passed the following docket order on 22.11.2016 upon this E.A.:

‘Written arguments filed on behalf of respondent. Arguments concluded. For orders call on 22.12.2016.’

However, on 20.02.2017, the executing Court passed the following order:

‘The petition is filed by the objection petitioner/DHR/plaintiff no.2 under Order XXI Rule 16 r.w.34 of IPC to dismiss the above EP no.40/2010 filed by the Respondent no.1/DHr/Plaintiff no.1.

Counter filed by the respondent no.1/D.Hr.No.1.

During the course of preparation of pronouncement of the order it is observed that in the facts and circumstances of this petition, without there being any oral or documentary evidence, it is not possible to determine the relief claimed for by the objection petitioner and as such, this petition is reopened for the purpose of adducing oral and documentary evidence on behalf of both the parties to this petition.

The objection petitioner to adduce her evidence. Call on 03.03.2017.’

This order was the cause for grievance for the petitioner to file this revision.

Sri O.Manohar Reddy, learned counsel, would contend that once the first respondent herein was unsuccessful in getting herself

declared as a decree holder in O.S.No.195 of 1995 on the file of the learned II Additional Senior Civil Judge, Ranga Reddy District, and she allowed the order dismissing her claim in this regard to attain finality, she stood precluded from raising the same issue again.

Per contra, Sri P.Vedavyas, learned counsel, would point out that the petitioner had himself filed IA SR No.3093 of 2007 in O.S.No.195 of 1995 under Order 1 Rule 10 CPC seeking deletion of the name of the first respondent as plaintiff No.2 from the decree in O.S.NO.195 of 1995 and to transpose her as defendant No.27 in the suit, by amending the judgment and decree in O.S.No.195 of 1995, but he himself filed a Memo on 21.07.2009 stating that he was not pressing the petition. Learned counsel would point out that the trial Court thereupon dismissed the IA as not pressed by order dated 08.10.2009. Learned counsel would further rely upon the use of the plural: 'plaintiffs' in the judgments in the suit and the appeals and assert that the judgments in the suit and, thereafter, in the appeals should be construed to have been passed in favour of both the plaintiffs in the suit.

It is no doubt true that the trial Court indiscriminately referred to the parties as 'plaintiffs' and 'plaintiff' at different places in the body of the judgment. However, the concluding portion of the judgment as well as the decree merely referred to the 'plaintiff' in singular. By virtue of the finding in the judgment that the second plaintiff no longer figured in the picture and that it was only the first plaintiff who had paid the sale consideration, this reference to a singular 'plaintiff' assumes significance. In effect, the trial Court made it quite clear that the suit was only decreed in favour of the first plaintiff and not both the plaintiffs. This was also correctly

understood by the first respondent herself, being the second plaintiff in the suit. That was the reason why she filed cross-objections before this Court in A.S.No.872 of 1998, specifically praying for passing of a decree in her favour also in O.S.No.195 of 1995. It is an admitted fact that the dismissal of the cross-objections was allowed to attain finality and no steps were taken by her to challenge the same. In consequence, the first respondent is precluded from contending that she is a decree holder in O.S.No.195 of 1995 on the file of the learned II Additional Senior Civil Judge, Ranga Reddy District.

The mere fact that the petitioner, having filed an application for deletion of her name as the second plaintiff and for her transposition as a defendant, did not press it does not deviate from or dilute the fact that no decree was passed in her favour. Her mere presence as the second plaintiff in the judgment and decree would not enure to her benefit to the extent of qualifying her as a decree holder when the decree, even as per her own understanding, was only in favour of the first plaintiff and she stood excluded. Typing errors resulting in use of the plural 'plaintiffs' at different places in the judgments passed by the trial Court and this Court are not sufficient in themselves to qualify the first respondent with the right to claim herself to be a decree holder in O.S.No.195 of 1995.

There is no getting away from the fact that the first respondent herself understood otherwise and filed cross-objections in A.S.No.872 of 1998 before this Court seeking passing of a decree in her favour also in the said suit. Once she emerged unsuccessful owing to the dismissal of the cross-objections by this Court, the issue stood settled in so far as her claim to be a decree holder in O.S.No.195 of 1995 is concerned. The liberty given to her by this Court to seek

appropriate remedies available under law would obviously be to the exclusion of the remedy sought by her in the cross-objections which stood expressly denied by the dismissal thereof. She therefore had no manner of right, be it on facts or in law, to seek dismissal of the execution proceedings instituted by the first plaintiff in the suit on the ground that she was also a decree holder. This being the clear factual and legal position, the executing Court ought not to have entertained her application and adjourned it so as to adjudicate the same on the strength of oral and documentary evidence. Doing so would negate and go against the dismissal of her cross-objections in A.S.No.872 of 1998, which attained finality long ago.

The civil revision petition is accordingly allowed. E.A.No.77 of 2015 in E.P.No.40 of 2010 shall stand dismissed. Pending miscellaneous petitions stand closed in the light of this final order. No order as to costs.

21st JULY, 2017

PGS

SANJAY KUMAR, J