

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4188 of 2015

ORDER:

The unsuccessful judgment debtors filed this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908, assailing the order, dated 28.08.2015, of the learned I Additional District Judge, Ongole, Prakasam District, passed in E.P.no.31 of 2014 in O.S.No.99 of 2008 filed by the Decree Holder under Order XXI Rule 34 of the Code requesting to direct the Judgment Debtors to execute a registered sale deed in terms of the decree and judgment passed in the aforementioned suit, which have become final.

2. I have heard the submissions of *Sri Naga Praveen Vankayalapati*, learned counsel for the revision petitioners/Judgment Debtors (hereinafter, 'JDrs'), and *Sri J.Seshagiri Rao*, learned counsel for the respondent/Decree Holder (hereinafter, 'DHR'). I have perused the material record.

3. The introductory facts, in a nutshell, are as follows:

The DHR obtained a decree in the suit for specific performance of an agreement of sale dated 01.02.2010. A Division Bench of this Court partly allowed the first appeal on 10.09.2013. The relevant concluding portion of the judgment of the Division Bench of this Court in the first appeal reads as under:

"Coming to the nature of relief that needs to be granted, learned counsel for the appellants submits that his clients need adequate extent for construction of their houses separately. Though that is not in the purview of the appeal, we are of the view that the fact that NOC is not issued in respect of Ac.0.88 cents, and that there is a genuine necessity for the appellants can be taken into account, and that an extent of 1000 square yards for both the appellants together can be excluded from the suit schedule property on a side, which has direct access to the road.

Hence, we partly allow the appeal upholding the decree passed by the trial Court, but directing that an extent of 1000 square yards with adequate access to the nearby road, shall be excluded from the suit schedule property."

[Reproduced verbatim]

4. Thus, this Court while partly allowing the first appeal and upholding the decree passed by the trial Court, directed that an extent of 1000 square yards with adequate access to the nearby road shall be excluded from the suit schedule property. As per the terms of the decree and judgment of the first appellate Court, which have become final, the DHr filed the execution petition and sought execution of the registered sale deed in respect of the decree schedule property after excluding 1000 square yards on the South East corner of the execution petition schedule property. The DHr also filed a rough plan along with the EP. The JDrs filed a counter and resisted the execution petition. They contended that 1000 square yards which shall be excluded shall be on the South West corner of the decree schedule property, but not on the South East corner as being claimed by the DHr in the execution proceedings. The JDrs also filed a rough plan.

5. On merits and by the orders impugned in this revision, the executing Court directed the JDrs to take 1000 square yards on the Eastern side (i.e., at the South Eastern corner) facing road as shown in the rough plan filed by the DHr and directed the JDrs to execute the registered sale deed in respect of the decree schedule property, after excluding the said 1000 square yards as shown in the plan of the DHr. In the orders, the executing Court also stated that on failure of the JDrs to execute a sale deed as directed, the DHr is at liberty to take appropriate steps for obtaining the sale deed through process of law.

6. Aggrieved thereof, the JDrs filed this revision petition.

7. The case of the JDrs and the submissions made on their behalf, in brief, are as follows:

The executing Court incorrectly held that the JDrs are permitted to take 1000 square yards on the Eastern side, i.e., in the item, which is of an extent of Ac.0.88 cents, by erroneously accepting the case of the DHr. The executing Court ought to have seen that the other item is of an extent of Ac.2.00 cents

and that in respect of the said two acres of land, which is also part of the decree schedule property, there is no need to obtain a No Objection Certificate (hereinafter, 'NOC'). The executing Court ought to have also seen that insofar as the item of which is in an extent of Ac.0.88 cents, which is also a part of the decree schedule property, there is a requirement of obtaining NOC from the Revenue Department. Hence, the executing Court ought to have seen that carving out 1000 square yards as directed in the judgment of the appellate Court from out of Ac.0.88 cents for which NOC is required from the revenue authorities will be of no avail to the JDrs as they cannot proceed with the construction of house in the said extent of 1000 square yards out of Ac.0.88 cents, unless NOC is obtained from the revenue authorities. Therefore, the executing Court ought to have seen that if the JDrs are provided 1000 square yards from out of the item which is of an extent of Ac.2.00 cents out of the decree schedule property, it will benefit the JDrs, as NOC was already obtained in respect of the said item of the decree schedule property. The executing Court did not consider the said aspects. In the draft sale deed, the consideration was mentioned for full extent instead of mentioning the consideration for the reduced extent after excluding 1000 square yards. Further, while furnishing the boundaries of the property in the draft sale deed, the boundaries are wrongly mentioned ignoring the extent of 1000 square yards to be excluded. The draft sale deed, is therefore, filed with incorrect recitals and incorrect boundaries. Hence, the revision may be allowed and the order of the executing Court may be set aside with a direction to the DHr to provide 1000 square yards on the Western side instead of on the Eastern side of the property, as shown in the rough plan filed by the DHr along with the execution petition.

8. In contrast, the learned counsel for the DHr would submit that originally the property agreed to be sold, which is in two items, is a contiguous block of Ac.2.68 cents. With regard to the Western side portion of Ac.2.00 cents, there

is no dispute. Insofar as the Eastern side extent of Ac.0.88 cents, a NOC is required to be obtained from the revenue authorities. Thus, the total extent is Ac.2.88 cents. However, in view of the judgment of the appellate Court, the DHr is entitled to obtain a sale deed after excluding 1000 square yards from out of the decree schedule property of Ac.2.88 cents. Thus, the DHr is now entitled to obtain a sale deed for the reduced extent. The said 1000 square yards roughly corresponds to Ac.0.20 cents. Therefore, after excluding Ac.0.20 cents out of Ac.2.88 cents, the DHr is entitled to obtain a sale deed for Ac.2.68 cents. Hence, the DHr filed execution petition for obtaining sale deed for the reduced extent by enclosing a rough plan and by showing 1000 square yards on the South Eastern corner of the entire property, which is adjacent to the road. Since it is the obligation of the JDrs to obtain NOC for the Ac.0.88 cents and the DHr is prepared to obtain sale deed for Ac.0.88 cents also without the necessity of obtaining NOC, the first appellate Court granted a decree for the entire extent after excluding 1000 square yards to enable the JDrs to construct a house in that 1000 square yards. Therefore, it is just and fair to exclude 1000 square yards on the South Eastern corner from out of Ac.0.88 cents and not on the Western side as being claimed by the JDrs. Hence, the executing Court is justified in accepting the version of the DHr and in giving necessary directions to the JDrs.

9. At the hearing, the learned counsel for the DHr while stating that there are some mistakes in the boundaries furnished in the draft sale deed, seeks permission of the Court to give liberty to file a fresh draft sale deed before the executing Court after rectifying the mistakes. He, accordingly, prayed for dismissing the revision.

10. I have given detailed and thoughtful consideration to the facts and submissions.

11. Since the DHr has already undertaken to file a fresh draft sale deed before the executing Court, after rectifying the mistakes, the only issue that arises for consideration in this revision is – ‘whether the 1000 square yards to be excluded from the decree schedule property shall be fixed on the South Eastern corner as being contended by the DHr or on the South West corner of the said property as being claimed by the JDrs?

12. Be it noted that the total extent of the property originally was Ac.2.88 cents. Insofar as Ac.2.00 cents on the Western side, there is no complexity, as there is no requirement of obtaining NOC from the revenue authorities in regard to that extent. Insofar as the remaining Ac.0.88 cents on the Eastern side, there is a snag, as for the said extent, a NOC is required to be obtained by the JDrs from the revenue authorities before executing the sale deed in favour of the DHr. However, the DHr expressed preparedness to obtain a sale deed for the entire extent, without the requirement of obtaining NOC for the extent of Ac.0.88 cents. The first appellate Court accepted the contentions of the parties and while allowing the appeal, partly decreed the suit of the DHr for the decree schedule property excluding 1000 square yards from the suit schedule property facilitating the JDrs to construct a house thereon for their use. However, in the appellate decree and judgment while stating that an extent of 1000 square yards with adequate access to the nearby road shall be excluded from the suit schedule property, the appellate Court did not make any observations as to on which side, the said extent of 1000 square yards has to be left out from out of the decree schedule property/ suit schedule property. It is the obligation of the JDrs to obtain NOC insofar as Ac.0.88 cents of property from the revenue authorities. The DHr carved out 1000 square yards to be excluded from the decree schedule property on the South Eastern side facing road on the South and filed the execution petition with rough plan for obtaining a sale deed accordingly for the remaining extent of the decree schedule property after excluding accordingly the said 1000 square yards. The

said 1000 square yards, which was shown in the South Eastern corner, falls within the Ac.0.88 cents for which NOC is required to be obtained by the JDrs. Now, the JDrs having been faced with the obligation of obtaining NOC for 1000 square yards, if the said extent is to be carved out from Ac.0.88 cents, want their 1000 square yards on the Western side from out of Ac.2.00 cents for which no NOC is necessary. It is to be noted that the first appellate Court in its judgment categorically held as follows:

“ Even if there is no NOC for Ac.0.88 cents, that should not come in the way, when the respondent is prepared to purchase that land also in the present condition. We therefore find that the respondent was entitled for the relief of specific performance of agreement of sale. The trial Court has examined the matter on correct lines and we do not find any legal or factual error in the judgment.”

13. Having so observed, the appellate Court made an arrangement for exclusion of 1000 square yards from out of the suit schedule property for use of the JDrs and partly allowed the appeal; and the operative portion of the judgment of the first appellate Court is already extracted supra. Having regard to the benefit that is conferred by the first appellate Court on the JDrs and the facts and circumstances of the case, the executing Court rightly held as follows:

“If 1000 square yards is left on the Western side as shown in the rough plan filed by the respondents/JDrs the damage to the petitioner/DHr will be more when compared to the 1000 square yards left by the petitioner/DHr on the Eastern side of the suit property shown in the rough plan filed by the petitioner/D.Hr” .

14. Thus, on balancing conveniences and inconveniences and the competing probabilities, the executing Court approved the version of the DHr, whereby, the DHr expressed willingness to exclude 1000 square yards on the South Eastern side of the entire decree schedule property and accordingly negated the contention of the JDrs that they are entitled to the said 1000 square yards on the South Western corner instead of on the South Eastern corner. As it is the

obligation of the JDrs to obtain NOC, in the facts and circumstances of the case, they cannot insist upon the DHr to give them 1000 square yards on the South Western corner of the entire property as being contended by them. In the well-considered view of this Court, the ends of justice would be met if the 1000 square yards to be excluded as per the decree and judgment of the first appellate Court are carved out from out of the extent of Ac.0.88 cents, i.e., at the South Eastern corner of the entire property as shown in the plan of the DHr.

15. Viewed thus, this Court finds that the executing Court is justified in passing the order impugned in the revision and that there is no merit in the revision.

16. In the result, the Civil Revision Petition is dismissed confirming the order of the executing Court, however, giving liberty to the DHr to file a fresh draft sale deed with a plan enclosed thereto showing the correct details and correct boundaries of the schedule property therein and also of the excluded 1000 square yards of the JDrs on South Eastern side facing Southern side road. It is needless to state that on the DHr filing a fresh draft sale deed, the Court of Execution shall proceed further in the matter and dispose of the Execution Petition in strict accordance with procedure established by law.

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

17th January, 2017
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M. SEETHARAMA MURTI, J