

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.358 OF 2017

ORDER:

This civil revision petition is filed under Section 115 C.P.C challenging the order in E.P.No.193 of 2016 in O.S.No.146 of 1987, issuing warrant of delivery on payment process, directing the judgment debtors to deliver vacant possession of the property to the decree holder.

The main contention of the petitioner is that no notice was issued before ordering delivery and though an application under Section 32 of Civil Rules of Practice is filed, no order has been passed by the Trial Court before passing such an order and ordered delivery of vacant possession of the property to the decree holder. It is also contended that there is a discrepancy in the schedule annexed to the plaint and execution petition and requests in all the petitions were turned down by the Trial Court, as the respondent lost his case even in the second appeal.

During hearing, learned counsel for the petitioner Sri G.P. Srinivas contended that, when there are discrepancies between the E.P. Schedule, decree schedule and the schedule annexed to the Power of Attorney, ordering delivery without considering the discrepancy is illegal and ordering delivery without notice is a serious irregularity. It is also contended that no order was passed in a petition filed under Rule 32 of Civil Rules of

Practice. Therefore, passing such an order is illegal and prayed to set-aside the order.

Whereas, learned counsel for the respondents while admitting that there is a little discrepancy in the extent of the schedule, contended that the boundaries will prevail over the extent in dispute. Therefore, ordering delivery of land within the four boundaries with specific measurements is sufficient and the discrepancy with regard to extent would not come in the way of granting order and the Executing Court did not recognise the General Power of Attorney Holder to prosecute the proceedings under Rule 32 of Civil Rules of Practice, as he was permitted to look after the execution proceedings only, thereby, failure to pass an order under Rule 32 Civil Rules of Practice is not a serious illegality to set-aside the delivery order and therefore, none of the grounds raised by the petitioner is sufficient to interfere with the order of the Trial Court. In the present case, decree was obtained for recovery of possession filed by the decree holder Emani Ramanamma who filed E.P.No.193 of 2016 in O.S.No.146 of 1987 under Order XXI Rule 11 C.P.C for delivery of possession of the property, for vacating the judgment debtors in possession of the same.

Undisputedly, the decree attained finality. But, there is a little discrepancy in the schedule annexed to the execution petition with regard to extent only. Whereas, the boundaries and measurements remained as it is. When there is a discrepancy in the extent, the boundaries and measurements will prevail and

therefore, the discrepancy will not come in the way of ordering delivery. That apart, the schedule annexed to the Power of Attorney is irrelevant, since no order was passed recognising Sri Venkateswara Rao as an agent of the petitioner/deGREE holder and on that ground, the order cannot be set-aside. The last contention urged before this Court is that, no notice was ordered before ordering delivery under Order XXI Rule 35 of Civil Procedure Code without any legal basis, since no notice is contemplated under Order XXI Rule 35 of Civil Procedure Code, before ordering delivery of possession. Therefore, none of the objections raised by the learned counsel are substantiated and this Court cannot interfere with the order while exercising power under Section 115 C.P.C, since the power of this Court under Section 115 C.P.C is limited. Therefore, ordering delivery of possession is in accordance with law. Hence, the finding of the Trial Court needs no interference, since it is free from any legal infirmities, warranting interference of this Court by exercising power under Section 115 C.P.C.

The power of this Court under Section 115 C.P.C is limited and this Court can exercise such power and call for records when the Trial Court failed to exercise its jurisdiction that is vested on it or exercised the jurisdiction illegally and irregularly. But, in the present case, there is nothing to show that the Executing Court exercised jurisdiction which is not vested or failed to exercise jurisdiction vested on it or exercised its jurisdiction illegally or irregularly. Therefore, I find no illegality or infirmity in the order passed by the Trial Court, warranting interference by this Court.

In view of the rival contentions, I find that it is a fit case to direct the Executing Court to confine delivery of property to the schedule within the boundaries with measurements as per schedule appended to the decree.

Accordingly, the civil revision petition is disposed of.

Consequently, miscellaneous petitions pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.07.2017

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