

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No. 1651 OF 2017

ORDER:

This Civil Revision Petition is filed by the claimants challenging the order dated 31.01.2017 in E.A.No.25 of 2011 where under the I Additional District Judge, Kadapa granted police aid to the respondent No.1/Decree Holder for securing the delivery of EP schedule property.

2. The 1st respondent/DHR filed O.S.No.52 of 2009 against respondent No.2/Judgment Debtor for specific performance of suit agreement of sale dated 05.04.2008 and obtained a decree on 15.02.2010. Thereafter, he filed E.P.No.63 of 2010. In the said E.P. he filed E.A. No.11 of 2011 for delivery of the EP schedule property.

3. It appears on 18.07.2011, when the bailiff/Ameen went to the schedule property for affecting delivery, it was obstructed by the petitioners and regarding the same, he intimated to the Court. Thereafter, the 2nd respondent filed E.A.No.25 of 2011 seeking police aid for removal of obstruction and for delivery of the property.

4. At the same time, the petitioners filed E.A.No.26 of 2011 for adjudication of their claim over the suit schedule property. Their case is that petitioners are the sons of 2nd respondent/JDR and EP schedule property was purchased by their father and mother with their earnings and it is a joint

family property; the alleged agreement of sale was not executed by their father and in fact both the petitioners have been in possession and enjoyment of the EP schedule property by paying municipal taxes and electricity bills; Since the acts of their father was detrimental to their interest, they filed O.S.No.40 of 2009, on the file of Principal District Judge, Kadapa seeking partition of the house property; by obtaining adjournments in the said suit, their father colluded with 1st respondent, got filed the suit for specific performance and suffered an ex-parte decree to defeat the interest of the petitioners; thus, both the respondents played fraud on the petitioners as well as Court and obtained a decree and pursuant to the said decree, the 2nd respondent obtained a sale deed by misleading the Court to deprive the rights of the petitioner.

5. It is now the grievance of the petitioners that pending disposal of the claim petition, the execution Court has passed a cryptic impugned order dated 31.01.2017 allowing the police aid petition. If the property were to be delivered pending their claim petition, the petitioners would suffer irreparable loss and injury. Hence, the CRP.

6. Heard the learned counsel for the petitioners and the learned counsel for respondent No.1. Notice issued to the 2nd respondent is not yet returned. Having regard to the fact that the 1st respondent is main contesting respondent, this petition is heard.

7. Learned counsel for the petitioners would submit that the execution court passed the impugned order without disposing the claim petition and thereby the petitioners are put to much hardship. He thus prayed to allow the CRP and give suitable direction to the execution court.

8. Opposing the CRP, learned counsel for 1st respondent Sri Murali Krishna would submit that as per the admissions of petitioners in their evidence, the property was acquired by their father and it is self acquired property. As such, the petitioners have no right therein to make any claim. In that view, the order passed by the execution Court is perfect. He sought for dismissal of the CRP. He would fairly admit that the police aid was granted, pending claim petition.

9. In view of the above respective submissions, it is clear that the execution Court has passed impugned order in E.A.No.25 of 2011 by granting police aid while the claim petition was still pending. It is straight law that when the petitioners' application, claiming right over the schedule property is pending, the Court ought to have passed an order on merits, at the first instance and then ought to have taken up E.A.No.25 of 2011 in E.P.No.65 of 2010 for orders. However, without passing any order therein, the execution Court, it appears passed order in E.A.No.25 of 2011 causing much hardship to the petitioners. Therefore, the order dated 31.01.2017 in E.A.No.25 of 2011 is hereby set aside with a direction to the execution Court to hear both parties and pass

appropriate orders on merits in E.A.No.26 of 2011 and thereafter, pass orders in E.A.No.25 of 2011, as per law. Till said order is passed in E.A.No.25 of 2011, the Court shall not affect the delivery of the property in question. The entire exercise shall be completed within one month from the date of receipt of copy of this order.

10. This Civil Revision Petition is accordingly allowed. No order as to costs.

11. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 11.09.2017
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