

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4475 OF 2017

ORDER:

The revision petitioner is the claim petitioner in E.A.No.31 of 2010, being a third party to the E.P.No.25 of 2009 in execution of the decree in O.S.No.1825 of 2005, pending on the file of the XI Additional Senior Civil Judge (FTC), City Civil Court, Hyderabad.

2. The 1st respondent is the decree holder and 2nd respondent is the judgment debtor of said E.P.No.25 of 2009. The revision is maintained impugning the dismissal order dated 30.08.2017 in E.A.No.5 of 2017. E.A.No.5 of 2017 is filed under Order XXI Rule 106 CPC to restore the E.A.No.31 of 2010 dismissed on 14.12.2016.

3. In the E.P.No.25 of 2009 of the decree obtained by the decree holder for possession against the judgment debtor supra of the decree schedule property covered by house bearing number 10-1-1120, admeasuring 59.89 square yards consisting of two rooms, varandah, open space, kitchen, bath room, WC situated at Risala Haboosh, Asifnagar Mandal, A.C.Guards area, Hyderabad, with boundaries of North and South: Road, East and West: respective house numbers 10-1-1121 and 10-1-1118.

4. It is in the pending execution, the claim petition is filed in E.A.No.31 of 2010 by the petitioner/third party to the decree and E.P. supra saying the decree obtained by the decree holder from the judgment debtor supra is by fraud and not binding on the claim petitioner and the decree holder in O.S.No.1825 of 2005 has to execute sale deed in favour of the claimant else the court has to execute sale deed, thereby the claim petition. The supporting affidavit in the claim petition is that the claimant's mother was mortgagee of the suit property from the defendant/judgment debtor of O.S.No.1825 of 2005 for rupees one lakh in June 1999 to repay within two years and she put her mother into vacant possession and subsequently, there is an oral agreement for sale with plaintiff entered by the claimant on 26.06.2010 for the suit property for Rs.3,30,000/- and the claimant paid Rs.1,65,000/- on 26.06.2010 out of total amount of Rs.3,30,000/- and obtained receipt that was attested by one Mohd. Moinuddin (claimant husband) and Smt.Nahid Begum, claimant's sister and on 05.07.2001, again paid Rs.40,000/-, for which the claimant passed receipt that was attested by Mohd. Saifuddin S/o. the claimant and Smt.Nahid Begum, sister of the claimant and another Rs.40,000/- paid on 04.11.2001 that covered by receipt attested by Mohd.Saifuddin and Smt.Naheed Begum supra in all to say Rs.2,45,000/- out of Rs.3,30,000/- paid by the claimant and subsequently on 25.12.2001, the claimant and her mother asked the plaintiff

to adjust the mortgage money for whatever remained payable to the sale consideration of Rs.3,30,000/- and Rs.15,000/- balance to be kept towards registration charges with her to execute sale deed as per convenience and the claimant also paid to her mother rupees one lakh for the mortgage transaction, however, by suppressing all this the plaintiff falsely filed the present suit O.S.No.85 of 2005 and obtained decree which is not binding. It is the contention that the E.P.No.25 of 2009 proceedings are not executable as the decree in O.S.No.1825 of 2005, dated 03.08.2009 is obtained by fraud and hence to adjudicate the claim. The counter filed opposing the said claim petition of the claim as collusive and not sustainable and on other several other contentions supporting the suit decree and sustainability of the E.P.No.25 of 2009 proceedings.

5. In fact, during adjudication of the claim petition when coming for enquiry from 2010 from several adjournments availed, the claimants in the course of hearing want to rely on the so-called three unstamped receipts of the alleged consideration paid to the decree holder Mujeeb Sultana and for its exhibiting since evidencing delivery of possession pursuant to the so-called oral contract for sale and the need to impound and the docket orders of the executing court in the claim petition on impounding when challenged in CRP.Nos.6270 and 6332 of 2016, common order was passed

by this Court on 16.12.2016, saying these documents are liable which refers if original as instrument and disclosing pursuant to the oral agreement for the house property payments allegedly made and property allegedly delivered liable for impounding and even after impounding by court with original stamp duty payable with ten times penalty, parties got liberty to pay for impounding by court or even to make a request to refer the document to the District Registrar for impounding and for that the petitioners have to file a memo before the lower court if at all so to refer.

6. In fact it shows after that order a memo appears to have been filed on 30.12.2016 either to send to the District Registrar or to return the receipts to the petitioner to enable to approach the District Registrar to cause impound. It is while so, the E.A.No.31 of 2010 was ended in dismissal for not getting ready for trial of the said claim petition. Against that dismissal and in seeking to its restoration, E.A.No.05 of 2017 filed. It is the dismissal order dated 30.08.2017 in E.A.No.05 of 2017 is the subject matter of the revision under impugnement. The order of the lower court shows the E.A.No.31 of 2010 claim petition is filed in seeking to set aside the decree in O.S.No.1825 of 2005 and that the E.P.No.25 of 2009 is not executable and to direct the decree holder to execute registered sale deed. As the claim petitioner failed to proceed with the enquiry in spite of conditional

orders of the year 2010, earlier dismissed on 24.08.2010 and again on the claimants application, it was restored on 20.07.2015 and thereafter, the claimant did not proceed with the enquiry in spite of availed several adjournments, the claim petitioner was directed subsequently to pay stamp duty and penalty and did not pay much less to proceed with enquiry. Leave about the earlier order dated 30.01.2016 in this regard and subsequently also there is no representation on behalf of the claimant and even opportunities afforded for no representation, ultimately, it was dismissed on 14.12.2016, with observation of claimant is not evincing interest to proceed further.

7. Even perusal of docket shows at no point of time claimant chosen to present and in spite of directions not paid stamp duty and it is to set aside the said dismissal order seeking to restore the E.A.No.31 of 2010. The E.A.No.05 of 2017 filed with the plea that the counsel was engaged in other courts and now the claimant is present and ready to pay stamp duty and proceed with enquiry. Said reasons not appearing just for no justifiable reasons assigned for earlier non-appearance several times for the entire docket proceedings earlier shows simply taking several adjournments on one ground or the other from the year 2010 all through and thereby there are no bonafides or any diligence, much less, any sufficient reasons to set aside the dismissal order.

8. The very claim petition is with a prayer for specific performance directing decree holder to execute sale deed pursuant to the so-called three unstamped, unregistered receipts of alleged part payment of consideration evidencing delivery of possession which put together to be impounded with stamp duty as a conveyance, either to pay the stamp duty before the court with ten times penalty or to seek for reference to District Registrar for impounding. Mere filing of memo during subsistence of E.A.No.31 of 2010 apart from not suffice the so-called memos shown filed were on 30.12.2016 and 20.02.2017, whereas the E.A. filed on 03.10.2010 was dismissed on 14.12.2016 itself and before that even order of this Court in CRP.Nos.6270 and 6332 of 2016 passed on 06.12.2016 immediately thereafter even no steps taken much less before dismissal for default on 14.12.2016 by payment of stamp duty or filing memo to refer to the District Registrar thereby a subsequent filing of the memos after dismissal of the E.A.No.31 of 2010 is of no significance. Further the claim petition is pending since 2010 without getting ready for disposal by simply staying execution of E.P.No.25 of 2009 in favour of the decree holder against the judgment debtor that too it is not even a case that of there is any independent claim much less through judgment debtor but only in claiming so-called receipts of oral sale acknowledgment and delivery of possession entered by decree holder.

9. The decree holder without obtaining possession from judgment debtor cannot deliver possession to the claimant, much less, to believe under the so-called oral sales and part payment receipts any delivery of possession by decree holder to the claimants when the very prayer in the E.P.No.25 of 2009 is to deliver possession. It clearly shows there is no any bonafide claim even to sustain on merits but for if at all there is any remedy of suit for specific performance based on the so-called unstamped and unregistered alleged part payment receipts of oral contract for sale coupled with delivery of possession to maintain a suit for specific performance and not by claim. Having regard to the above, there is nothing to interfere with the dismissal order of the lower court.

10. Accordingly and with the above observations, the revision is dismissed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

30.11.2017
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