

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

Civil Revision Petition Nos.3437 & 3538 of 2017

CRP.No.3437 of 2017

Between:

Shaik Modin Sab (died)
& others.

.. Petitioners

AND

Dr. Jaffer Hussain

.. Respondent

Date of Judgment Pronounced: **28.07.2017**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE A.V. SESA SAI

*** HON'BLE SRI JUSTICE A.V. SESA SAI**

+Civil Revision Petition Nos.3437 & 3538 OF 2017

% Dated 28-07-2017

Shaik Modin Sab (died) & others

Petitioners

VERSUS

\$ Dr. Jaffer Hussain

Respondent

! Counsel for Petitioner : Sri M. Venkata Rao

^Counsel for the respondent : Sri P. Ramakrishna

<GIST:

> HEAD NOTE:

? Cases referred



THE HON'BLE SRI JUSTICE A.V.SESHA SAI**CIVIL REVISION PETITION Nos.3437 and 3538 of 2017****COMMON ORDER:**

Since these two revisions arise out of one execution proceedings and as the parties are also same, this Court deems it appropriate to dispose of these revisions by way of this common order.

Judgment debtors in E.P.No.46 of 2014 on the file of the Court of the Principal Junior Civil Judge, Kadiri (for short, "the Court below") are the petitioners in these revisions.

CRP.No.3437 of 2017 challenges the order, dated 21.04.2017, passed in E.A.No.327 of 2015 and CRP.No.3538 of 2017 calls in question the order, dated 21.04.2017, passed in E.A.No.528 of 2015.

Heard Sri M. Venkata Rao, learned counsel for the petitioners, and Sri P. Ramakrishna for the respondents.

O.S.No.353 of 1989 instituted by one Sri Shaik M.Jaffar Hussain against Shaik Modin Sab and others for declaration of title and possession was decreed by the Court below on 02.02.2003 and the appeal suit, A.S.No.8 of 2003, filed against the said decree was dismissed on 22.04.2003. In respect of the self-same property, Shaik Modin Sab filed O.S.No.336 of 1989 for declaration of title and permanent injunction initially against Sri Shaik Jaffar Hussain and T.Subahan and thereafter one Smt. Katam Madhavi w/o. Katam Veera Brahmaiah was added as defendant No.3 in the

said suit. The said suit instituted by Sri Shaik Modin Sab ended in dismissal on 27.02.2003. A.S.No.10 of 2003 filed against the said dismissal order was also dismissed on 29.08.2005 and the same was also confirmed in S.A.No.36 of 2006 before this Court on 19.06.2006.

Claiming to be the legal representative of Shaik Jaffar Hussain, Smt. K. Madhavi represented by her General Power of Attorney holder, Sri U. Raja Reddy, filed E.P.No.46 of 2014 in O.S.No.353 of 1989 before the Court below seeking delivery of possession of the suit schedule property from petitioner Nos.3 to 6 herein, who are the legal representatives of Sri Shaik Modin Sab.

In the said E.P.No.46 of 2014, E.A.No.283 of 2014 was filed under Rule 32 of the Civil Rules of Practice seeking permission of the Court below to be represented by the general power of attorney holder and the same was allowed on 07.04.2014. As against the said order, petitioners filed CRP.No.1605 of 2014. This Court by way of an order, dated 02.03.2015, dismissed the revision, leaving it open to the petitioners to raise all available objections before the Court below against entertainment of the execution petition.

Subsequently, the petitioners filed E.A.No.327 of 2015 under the provisions of Order XXI Rule 17 of the Code of Civil Procedure (for short, "CPC"), praying the Court below to reject the E.P.No.46 of 2014. The petitioners also filed E.A.No.528 of 2015 in E.A.No.327 of 2015 under Section 151 CPC

seeking permission to file additional affidavit, raising all the facts and legal pleas. The said applications were resisted by the respondent herein by filing counter. The Court below by way of the orders under challenge, dated 21.04.2017, dismissed E.A.Nos.327 and 528 of 2015.

It is contended by the learned counsel for the petitioners that the orders passed by the Court below are erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order XXI Rule 17 and Section 151 CPC. It is further contended by the learned counsel that the Court below grossly erred in dismissing the application filed by the petitioners for rejection of the execution petition, as the execution petition filed by the respondent herein is not maintainable. It is further argued by the learned counsel that unless the decree is amended, the present execution petition cannot be maintained and that the sale deed referred to by the respondent herein has never been acted upon.

On the contrary, it is submitted by the learned counsel for the respondent that there is no error nor there exists any infirmity in the impugned orders and in the absence of the same, the present revisions are not maintainable under Section 115 CPC. It is further contended by the learned counsel that the contentions of the learned counsel for the petitioners as regards maintainability of the execution petition in view of the express provisions of Section 146 read with Order XXI Rule 16 cannot be sustained in the eye of law.

It is also the submission of the learned counsel that the application filed under Order XXI Rule 17 CPC is not maintainable and the Court below is perfectly justified in dismissing the said application.

There is absolutely no controversy on the reality that Sri Shaik Modin Sab instituted O.S.No.336 of 1989 before the Court below, wherein Smt. K. Madhavi was impleaded as 3rd defendant. The dismissal of O.S.No.336 of 1989 by the said Court is not in dispute. In the same way, the decree rendered in O.S.No.353 of 1989 is also not in dispute. A copy of the deposition of Shaik Jaffar Hussain, plaintiff in O.S.No.353 of 1989, is placed on record by the learned counsel for the respondent herein. In the said evidence Sri Shaik Jaffar Hussain categorically deposed that he executed the registered power of attorney deed in favour of B. Amarnath Reddy in the year 1994, authorizing to conduct litigation on his behalf and also to sell away the property covered by the plaint schedule and in the year 1995 B. Amarnath Reddy executed a registered sale deed in respect of plaint schedule property in favour of Smt. K. Madhavi wife of Bramaiah and that the said Madhavi is the owner of the property.

There is also no controversy on the fact that earlier when permission was granted by the Court below to the general power of attorney to prosecute the execution petition on behalf of Smt. K. Madhavi in E.A.No.283 of 2014, the said order was confirmed by this Court in CRP.No.1605 of 2014.

It is also very much evident from the said order, which is placed on record by the learned counsel for the respondent, that while dismissing the revision this Court kept it open to the petitioners to raise all objections available against the entertainment of execution petition.

While referring to Order XXI Rule 17 CPC, it is the emphatic contention of the learned counsel for the petitioners that the Court below ought to have considered the application i.e., E.A.No.327 of 2015 under the said provision of law and the Court below grossly erred in holding that the said provisions are not applicable. In order to consider the said aspect, this Court deems it appropriate to refer to the said provision of law i.e., Order XXI Rule 17, which reads as under:

“17. Procedure on receiving application for execution of decree – (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court shall allow the defect to be remedied then and there or within a time to be fixed by it.

(1A) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.”

A reading of the above provision of law makes it manifest that on receipt of the application, the executing Court is required to ascertain whether the requirements of Rules 11 to 14, as may be applicable, have been complied with or not and in the event of non-compliance, the duty is cast upon the Court to allow the said defect to be remedied. By any stretch of imagination, it cannot be said, from a reading of the above provision of law, that E.A.No.327 of 2015 is maintainable under the said provision of law. In fact, the learned Principal Junior Civil Judge, Kadiri, elaborately considered the maintainability of the application under Order XXI Rule 17 CPC and recorded a categoric finding with regard to non-maintainability of the said application by assigning cogent and convincing reasons. The learned Judge also found that whether Smt. K. Madhavi is the legal representative?, whether she can enter into the shoes of the original decree holder Sri Shaik Jaffar Hussain? and whether Sri V. Raja Reddy, general power of attorney holder of Smt. K.Madhavi, is entitled to proceed with the case or not? are the aspects, which are required to be decided only after full fledged trial.

Resisting the present revisions, it is the categoric submission of the learned counsel for the respondent that in view of the express language employed under Section 146 and Order XXI Rule 16 CPC, the objections of the petitioners cannot stand for judicial scrutiny. The Court below while dismissing E.A.No.528 of 2015 rejected the request of the petitioners herein by assigning valid reasons. Therefore, this Court has absolutely no scintilla of hesitation to hold that the present revisions do not merit any consideration and are liable to be dismissed.

For the aforesaid reasons, both the civil revision petitions are dismissed. However, the learned Principal Junior Civil Judge, Kadiri, shall dispose of E.P.No.46 of 2014 in O.S.No.353 of 1989 without being influenced by the observations made either in the impugned orders or in this order.

Miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 28.07.2017
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