

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Civil Revision Petition No.2311 of 2017

ORDER:

This revision petition under Section 115 of the Code of Civil Procedure is filed challenging the order, dated 11.4.2017 in E.P. No.93 of 2016 in O.S. No.679 of 2007 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad, overruling the objection raised by the Judgment Debtor regarding maintainability of E.P. in view of sale of property to Ziaullah Khan under registered sale deed, dated 19.2.2016 and thereby the respondent herein is ceased to be the owner of the property.

2. The trial Court recorded a finding that the petitioner before this Court did not place any material before the Court to accept sale of the property, but the counsel contended that a sale deed was filed before the Court under SR.No.1325, dated 21.2.2017 and without considering the same, the Court came to such conclusion. However, the sale deed is brought on record by the counsel for the petitioner along with the revision and the respondent also did not deny the sale of the property, but contended that she is under obligation to deliver the vacant possession of the property as the property was sold due to personal reasons. But this fact appears to be incorrect in view of condition No.2 of page No.3 of sale deed, dated 19.2.2016, which reads as follows :

“That the vendor has delivered the physical, vacant and peaceful possession of the schedule mentioned property to the vendee to have and to hold the same absolutely for ever.”

3. Therefore, the contention that the respondent has to obtain delivery of possession of the schedule property by executing the decree and deliver the same to vendee is incorrect. Even if possession of the property was not delivered to the vendee, the vendee can come on record under Order 22 Rule 10 of C.P.C. i.e., by assignment etc., and execute the decree stepping into the shoes of decree holder, but decree holder is incompetent to execute the decree as she ceased to be the owner.

4. Hence, the finding of the executing Court that the petitioner did not place any record to prove sale of the property is incorrect. Apart from that, sale of the property is an undisputed fact, but the vendee under a document, dated 19.2.2016 is at liberty to come on record or file fresh E.P. for delivery of the schedule property, if advised.

5. Leaving it open to initiate necessary proceedings for delivery of the possession to the vendee under sale deed, dated 19.2.2016, the Civil Revision Petition is allowed sustaining the objection of counsel for the petitioner and the order passed by the executing court is hereby set aside. No order as to costs.

6. As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:06-06-2017

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