

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1162 OF 2015

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') is filed by the petitioners/J.Drs, challenging the order, dated 10-10-2014 in E.A.No.238 of 2014 in E.P.No.135 of 2013 in O.S.No.368 of 1999 on the file of the Principal Junior Civil Judge, Tenali, Guntur District.

2. Petitioners (J.Drs.) filed the above Execution Application under Section 151 CPC to re-open the Execution Petition and to dispose of the same on merits. The Executing Court after considering the material available on record, dismissed the execution application. Aggrieved thereby, the present revision is preferred by the petitioners.

3. The petitioners are the J.Drs in decree in O.S.No.368 of 1999 on the file of the Principal Junior Civil Judge, Tenali. After disposal of the suit, the matter was carried in first appeal, which ended in dismissal. Challenging the same, Second Appeal is also preferred in S.A.No.267 of 2009 and the same is pending before this Court. The petitioners also filed SAMP No.214 of 2014 for grant of stay under Order XLI Rule 5 CPC and the same was also dismissed by this Court permitting the petitioners to raise all the contentions in the Execution Petition. Thus, there was no stay against execution of the decree, which was passed for recovery of possession.

4. The respondents (D.Hrs) filed the Execution Petition and obtained delivery through process of Court. After hearing the respondents and after effecting delivery and

return of the warrant by the Amin (Bailiff), the Executing Court heard the objections of the petitioners and recorded delivery, instead of terminating the Execution Petition, the Executing Court recorded that the E.P. was closed. The petitioners filed the present application to re-open the E.P. on the ground that the Amin could not have separated the property i.e., Ac.0.40 cents out of Ac.0.70 cents and delivered the property to the D.Hrs on the next day of issue of warrant. The petitioners also raised a contention that there was standing crop in the land, but without taking into consideration the value of the standing crop, the learned Principal Junior Civil Judge, Tenali, recorded delivery of property.

5. The Executing Court dismissed the execution application after affording opportunity at every stage. Assailing the said order, this revision is preferred under Section 115 CPC.

6. During the course of hearing, Mr.G.Vasantha Rayudu, learned counsel appearing for the petitioners reiterated the contentions more particularly with regard to impossibility to divide the property within a day, fix boundaries and deliver property without the help of any competent person like surveyor and D.Hrs failed to deposit value of the crop existing on the date and delivery is also a serious lacuna in the order and no panchanama was drafted.

7. During enquiry, admittedly no evidence was adduced by both the parties either oral or documentary. Section 114 (e) of the Indian Evidence Act, 1872 (for short 'the Act') deals with presumption of facts and the Court may draw a presumption about the existence of any fact, which it thinks likely to have happened regard being had to the

common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Clause (e) permits the Court to draw a presumption as to the judicial acts and official acts, that the judicial and officials acts have been regularly performed. Illustration under Section 114 (e) of the Act clarify that a judicial act, the regularity of which is in question, was performed under exceptional circumstances.

8. Moreover, the presumption is a rebuttable one, to dispel with such presumption, the petitioners have to produce documentary evidence or adduce oral evidence. But no such evidence was brought on record by the petitioners to dispel the presumption that is to be drawn by the Court presuming that the official act done by the Amin is regularly performed. In the absence of any material that the Amin did not separate the properties i.e., Ac.0.40 cents out of Ac.0.70 cents, it is difficult to accept the contention that the property was not divided in view of presumption under Section 114 (e) of the Act, presuming that he discharged his duties. Therefore, this contention cannot be accepted at this stage by exercising the power under Section 115 CPC.

9. The next contention is that the D.Hrs did not deposit the value of the crop existing on the land on the date. But the Executing Court directed the D.Hrs to deposit the value of the standing crop. The order is silent as to whether the D.Hrs deposited the value of the standing crop existing on the land on the date or not. Even if the D.Hrs did not deposit the value of the standing crop on land on the date of delivery, remedy open to the petitioners is otherwise, but not to reopen the E.P., which was closed instead of terminating the same. The petitioners taking advantage of

the mistake of the Court, filed the present application to reopen the E.P. which is not permissible under law.

10. The next contention is that no panchanama was drafted at the time of delivery. But, as seen from the order, physical delivery was effected. Preparation of panchanama for delivery is not contemplated anywhere. But acknowledgement of receipt of delivery of the property in the presence of mediators is sufficient and even on that ground, E.P. cannot be reopened.

11. Section 115 of CPC enables this Court to revise the order only in three circumstances where the Court failed to exercise jurisdiction that vested on the Court or exercised jurisdiction, which is not vested on it or where the Court exercised jurisdiction in irregular or illegal manner. But no such irregularity or illegality in exercise of jurisdiction is brought to the notice of this Court. On the other hand, the presumption under Section 114 (e) of the Act was not dispelled or rebutted by adducing any evidence, though it is rebuttable presumption.

12. The Apex Court in **DEVENDER PAL SINGH V STATE NCT OF DELHI AND ANOTHER**¹ had an occasion to decide permissibility of the presumption under Section 114 (e) of the Act regarding regularity of official acts while deciding a criminal case in a different perspective. But, the law declared by the apex Court is that the Court may draw a presumption as to the regularity of official acts under Section 114 (e) of the Act. If the principle is applied to the present facts of the case, the Court is bound to draw a presumption of official act of the Amin or Bailiff as regular.

¹ AIR 2002 SC 1661

13. In view of foregoing discussion, I have no hesitation to hold that the order passed by the Executing Court does not call for interference of this Court while exercising power under Section 115 CPC.

14. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 25-07-2017.

Hsd

