

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1036 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order dated 13.12.2016, passed in E.P.No.125 of 2014 in O.S.No.45 of 1972 on the file of the Principal Senior Civil Judge, Tirupati, wherein the trial Court directed the petitioner herein to deliver "B" schedule property to the first respondent herein within two months, by engaging Municipal Surveyor for making division of their respective shares and file proof of the same in the Court. It was further held that, if the petitioner herein fails to do so, the same will be done through process of the Court without any further enquiry and notice to the petitioner.

2) The facts in issue are as under:

One Venkata Subba Reddy and his mother filed O.S.No.363 of 1968, which on transfer came to be numbered as O.S.No.45 of 1972. The said suit which was filed for declaration of title and delivery of possession in respect of dry land admeasuring Ac.0.59 cents in Sy.No.4055 of Tirupati Revenue Village, Chandragiri Taluk, Chittoor District was decreed. The case of the plaintiffs was that Sri Guruva Reddy, who is the maternal uncle of first plaintiff brother of

second plaintiff, bequeathed all his properties including the plaint schedule property under a Will dated 18.05.1963 and after his death the first plaintiff acquired absolute rights over the property. The defendants therein contended that the Will dated 18.05.1963 is not valid and binding on the defendants. After appreciating the evidence on record, the trial Court decreed the suit. Challenging the same, A.S.No.161 of 1985 came to be filed, which was dismissed on 05.09.1989. Aggrieved by the same, S.A.No.511 of 1989 came to be filed before this Court, which was also disposed of on 21.06.2002, confirming the order passed by the lower court. Thereafter the 1st respondent herein preferred Civil Appeal No.9145 of 2003 before the Apex Court. During the pendency of the Civil Appeal and pursuant to the directions of the Apex Court, the petitioner and the first respondent entered into a compromise. A settlement deed dated 17.11.2010 came to be filed before the Apex Court. In view of the compromise arrived at, the Apex Court disposed of the Civil Appeal on 15.12.2010 in terms of the compromise. As per the compromise deed, the appellant therein ie. petitioner herein, shall hand over Ac.0.22 cents out of Ac.0.59 cents of the suit schedule property, which is in peaceful possession and enjoyment of the petitioner herein. As the petitioner failed to deliver possession of the said property, a legal notice came to be issued for division of the property with the

help of Municipal Surveyor, but there was no response from the petitioner. The above circumstances lead to filing of the execution petition.

3) A counter came to be filed in the E.P. disputing the averments made in the affidavit filed in support of the E.P. It is stated in the counter that the first respondent herein got filed O.S.No.14 of 2004 through his friends and also gave evidence against the rights of the petitioner in O.S.No.14 of 2004. The evidence adduced led to questioning the validity of the judgment and decree in O.S.No.45 of 1972 and also the terms of compromise filed in the Civil Appeal before the Apex Court. However, it is also stated that the petitioner is ready to act as per the terms and conditions of Para 3 and 8 of the compromise petition, if O.S.No.14 of 2004 is withdrawn.

4) After considering the documentary evidence adduced by both the parties, the trial Court allowed the E.P. directing the petitioner herein to deliver the "B" Schedule property to the 1st respondent herein within two months by engaging Municipal Surveyor, for making division of their respective shares and file proof of the same in the Court. Challenging the same the present Civil Revision Petition is filed.

5) The main ground urged by the learned counsel for the petitioner is that the 1st respondent herein failed to comply with certain terms and conditions, more particularly clauses 3 and 8 of the compromise deed. It is said that contrary to the terms of the compromise, the first respondent herein got filed O.S.No.14 of 2004 through his friends and relatives in respect of the very same property. In the said suit, the first respondent got impleaded himself as defendant No.5 and filed a written statement confirming the existence of the earlier Will dated 22.02.1963, while denying the Will dated 18.05.1963. He got himself examined as DW.2 and gave evidence as per the contents of the written statement. It is said that, on one hand, the first respondent herein is disputing the Will and on the other hand he is claiming right under a compromise, without withdrawing O.S.No.14 of 2004. Since the first respondent is blowing hot and cold, he seeks dismissal of the E.P.

6) Learned counsel for the first respondent opposed the same contending that in view of the order of the Apex Court in Civil Appeal and taking into consideration the terms and conditions of the compromise deed, the petitioner has to deliver possession of the property. Having flouted and violated the terms of compromise, the petitioner cannot complain about the violation of the terms and conditions of

compromise by the first respondent. According to him, the first respondent never violated any terms of the compromise. He further submits that only to avoid implementation of the Apex Court order, the present litigation is sought to be created.

7) As seen from the rival arguments, the entire issue revolves around the violation of terms of the compromise more particularly clauses 3 and 8 of the compromise deed, which was filed before the Apex Court in the Civil Appeal. Clause 3 of the terms of compromise reads as under:

“3. As this being the full and final settlement in all respects between the parties herein, both parties have unconditionally and categorically agreed that they shall withdraw all disputes of civil nature and criminal nature (which include but not limited to suits, petitions, appeals, revisions, execution proceedings including execution applications etc. of civil nature and complaints, appeals, revisions and all other proceedings of criminal nature) and shall, by the dictates of their conscience and faith on God, cooperate with each other in settling/ resolving all such disputes/ cases.”

8) Though the learned counsel for the petitioner tried to argue that there was also violation of clause (8) but however did not press for the same. His main plea is that the

first respondent herein got filed O.S.No.14 of 2004 through one Chalapati Reddy and in the said case, he filed written statement stating that while the Will dated 18.05.1963 is a forged one, another Will dated 22.02.1963 is true and valid. Since the above incident is said to have been taken place after filing of the compromise petition, the learned counsel for the petitioner would contend that the same is in violation of the terms of the compromise.

9) It is to be noted here that O.S.No.14 of 2004 came to be filed by one Chalapati Reddy. The case of the petitioner is that the said suit was filed through one Chalapati Reddy by the first respondent herein. There is no positive material to show that the suit was initiated at the instance of first respondent herein. Be that as it may, it is to be seen that the written statement in the said suit was filed in the month of September, 2006 ie. much prior to the filing of the compromise memo before the Apex Court. Since the written statement came to be filed by taking a particular plea, the first respondent, who got examined himself as DW.2, deposed about the contents of the written statement. From the sequences of events, it is clear that filing of the suit and filing of the written statement took place much prior to the filing of the compromise memo. The chief affidavit of the first respondent came to be filed in the month of

October, 2012 ie. after the compromise decree. It appears that since the written statement was filed in the month of September, 2006 itself, by taking a particular plea, the first respondent, who is the fifth defendant in the said suit, was forced to stick to the version stated in the written statement. It is also to be noted here that the order of the Apex Court and terms of compromise were filed along with the chief affidavit of the first respondent herein in the year 2012. Therefore, it cannot be said that there was any suppression of material fact or that the first respondent herein tried to violate the terms and conditions of the compromise arrived at before the Apex Court. Apart from that the petitioner herein stated in his counter that he has no objection to follow the terms and also orders of the Hon'ble Apex Court. That being so, the petitioner is bound to deliver the "B" schedule property to the first respondent herein.

10) The next argument which was advanced by the learned counsel for the petitioner is that the order of the Apex Court in Civil Appeal cannot be termed as a decree and without a decree, the order of the Apex Court cannot be executed. The same, in my view, is without substance and it cannot be accepted. Infact, such a plea was never taken in the counter. It is to be noted here that both the parties presented a signed document before the Apex Court,

agreeing to certain terms and basing on the said understanding, the Apex Court passed an order directing the parties to follow the terms of compromise. Having accepted the terms of the compromise, the petitioner cannot now turn back and say that the same does not amount to a decree and that he need not to follow the same.

11) In view of the above and as the compromise arrived at between the parties, before the Apex Court is not in dispute, I see no reasons to interfere with the order passed by the trial Court.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13) Consequently, the Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

05.07.2017
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