

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition Nos.5751, 6221 and 6256 of 2017

COMMON ORDER:

The judgment debtor No.5 in a decree for specific performance, has come up with the above revisions, challenging different orders passed at the stage of execution.

2. Heard Mr. Sai Gangadhar Chamorthy, learned counsel for the revision petitioner and Mr. Narasimha Rao Gudiseva, learned counsel for the respondents.

3. The respondent in these revisions filed a suit in O.S.No.783 of 1997, for specific performance of an agreement of sale, against one Sudhakara Rao.

4. The suit was decreed *ex parte* on 13-07-1999.

5. The respondent filed E.P.No.62 of 2001. In the said execution petition, the Court executed a sale deed on 01-04-2002.

6. Thereafter, the respondent filed E.P.No.117 of 2002 for delivery of possession. The Court ordered the issue of delivery warrant, but the same was returned on account of obstructions.

7. During the pendency of the said E.P., the judgment debtor Sudhakar Rao died on 28-11-2005 and his wife, three sons and a daughter were impleaded as respondents on 06-03-2006.

8. The wife of the deceased judgment debtor first filed a claim petition in E.A.No.349 of 2002 under Order XXI Rules 97, 99 and 101 of the Code of Civil Procedure, to recall the delivery warrant. Her claim was that she was in possession of the suit property under a possessory agreement of sale dated 19-08-1985. Apart from filing

a claim petition in I.A.No.349 of 2002, the wife of the deceased judgment debtor also filed a suit in O.S.No.424 of 2002 for setting aside the *ex parte* decree in the suit for specific performance O.S.No.783 of 1997.

9. The suit O.S.No.424 of 2002 as well as the claim petition E.A.No.349 of 2002 were dismissed. The wife of the deceased judgment debtor filed two appeals in A.S.Nos.104 of 2007 and 140 of 2008 as against the dismissal of her suit and her claim petition. Both the appeals were dismissed on 01-04-2014.

10. It must be pointed out that in E.P.No.117 of 2002 filed for delivery of possession, the wife of the judgment debtor impleaded as 2nd respondent and her two sons and a daughter impleaded as respondents 3, 4 and 5 remained *ex parte*. The only other son impleaded as judgment debtor No.6 alone was contesting the E.P.No.117 of 2002.

11. After hearing the arguments of the decree holder and judgment debtor No.6, the Court issued delivery warrant on 07-09-2017 in E.P.No.117 of 2002. But again there were obstructions and the warrant returned on 12-09-2017.

12. Thereafter the revision petitioner herein, who is the daughter of the deceased judgment debtor and who was arrayed as judgment debtor No.5 filed an application in E.A.No.217 of 2017 for setting aside the *ex parte* order dated 20-04-2015, on the ground that she purchased the schedule mentioned property under a registered sale deed on 30-10-2013 and that she also filed two suits one in O.S.No.508 of 2013 for permanent injunction against the

decree holder and another in O.S.No.512 of 2017 for declaration of title.

13. This application E.A.No.217 of 2017 was dismissed by the Executing Court by order dated 11-10-2017. As against the said order, the petitioner herein filed a regular first appeal in A.S.No.226 of 2017. Along with the said appeal, the petitioner took out an application in I.A.No.894 of 2017 for stay of further proceedings in the execution proceedings. But the First Appellate Court dismissed the stay petition in view of the chequered history of the litigation. Questioning the correctness of the order of the First Appellate Court in I.A.No.894 of 2017 in A.S.No.226 of 2017, the judgment debtor No.5 has come up with C.R.P.No.6256 of 2017.

14. Along with the application E.A.No.217 of 2017 for setting aside the *ex parte* order passed in the execution proceedings the judgment debtor No.5 also moved another application in E.A.No.216 of 2017 for a stay that was also dismissed by an order dated 11-10-2017. As against the said order, the petitioner filed an appeal in A.S.No.235 of 2017. In the appeal, the petitioner sought interim stay in I.A.No.917 of 2017, but the First Appellate Court dismissed the stay petition forcing the petitioner/judgment debtor-5 to come up with C.R.P.No.6221 of 2017.

15. After the dismissal of the petition to set aside the *ex parte* order, the executing court granted orders for break open and police protection. Immediately, the petitioner/judgment debtor filed an application in E.A.No.230 of 2017 seeking stay of the orders granting police protection and break open, on the ground that she

wanted to move appeals against the dismissal of her application to set aside the *ex parte* order and stay. This petition for stay in E.A.No.230 of 2017 was dismissed by the Executing Court by order dated 23-10-2017. As against the said order, the petitioner has come up with C.R.P.No.5751 of 2017.

16. At the outset, it should be pointed out that C.R.P.No.5751 of 2017 has become infructuous, since the said revision arises out of the refusal of the Executing Court to grant stay pending the issue of the certified copies of the orders passed in the other applications filed by the petitioner, to enable her to file regular appeals. Subsequently, certified copies have been issued and the petitioner has filed regular appeals along with the petitions for stay. Those petitions for stay have been dismissed, forcing the judgment debtor No.5 to come up with the other two revisions. Therefore, nothing survives in C.R.P.No.5751 of 2017. Hence, it is closed.

17. In so far as the other two revisions are concerned, it may be seen from the narration of facts that the legal heirs of the judgment debtors are waging a war one after another for the past 15 years at the stage of execution. In the first instance, the wife of the judgment debtor (mother of the petitioner herein) claimed independent title, moved the Executing Court and also moved separate suits. After she failed, the petitioner herein filed independent suits, after remaining *ex parte* in the execution proceedings. After failing to get interim order for protection in the independent suits, the petitioner sought setting aside of the *ex parte* order in the execution petition. Therefore, the Courts below were

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right in dismissing her petitions, since a decree passed way back in the year 1999 could not be executed for the past more than 15 years due to one hurdle or the other posed by the petitioner and her family. Hence, the Civil Revision Petitions are devoid of merits.

Therefore, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 24-11-2017

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