

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.314 OF 2018

ORDER:

This civil revision petition is filed by the petitioner-third party, under Section 115 of CPC, assailing the order dated 11.12.2017 passed in E.A.No.818 of 2012 in E.P.No.251 of 2012 in O.S.No.29 of 2006 on the file of the Court of Principal Junior Civil Judge, Nandyal.

2. Heard the learned counsel for both the parties.

3. The first respondent filed O.S. No.29 of 2006 on the file of the Court of Principal Junior Civil Judge, Nandyal for eviction of the second respondent from the suit schedule property. The trial Court, after full-fledged trial, decreed the suit in favour of the first respondent and against the second respondent. In order to execute the decree passed in O.S.No.29 of 2006, first respondent filed E.P.No.251 of 2012. During the pendency of the execution proceedings, the petitioner filed E.A.No.818 of 2012 under Order XXI Rule 97 and Section 151 of CPC. The executing Court, by the impugned order, dismissed the petition. Hence, the revision petition.

4. Now the point that arises for consideration in this revision is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court under Section 115 of CPC?

5. The predominant contention of the learned counsel for the petitioner is that any application filed under Order XXI Rule 97 of CPC has to decide as if it is a suit. In order to appreciate the said

contention, it is not out of place to extract hereunder Rule 97 of Order XXI of CPC:

Order – XXI Execution of Decrees and Orders

Rule 97. Resistance to delivery of possession to decree-holder or purchaser

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

6. A perusal of the above Rule clearly demonstrates that an application filed under Order XXI Rule 97 of CPC has to be decided on merits, after affording reasonable opportunity to both parties to adduce oral and documentary evidence. In the instant case, after filing the affidavit in lieu of chief-examination, the executing Court passed the impugned order. The executing Court, without proceeding in accordance with law, came to a conclusion that the petitioner filed vexatious petition in order to deprive the legal rights of the first respondent-Decree Holder. The executing Court also made an observation that the petitioner was in possession of the suit schedule property with effect from 19.10.2009. The executing Court, having come to such a conclusion, ought to have decided whether the petitioner is entitled to continue in possession of the suit schedule property or not.

7. The contention of the petitioner is that he has been in possession and enjoyment of the suit schedule property. Therefore, the executing Court has to decide whether the petitioner was in possession and enjoyment of the suit schedule property as on the date of filing of E.A.No.818 of 2012 i.e., 27.11.2012 or not.

8. The executing Court has not followed the procedure as contemplated under Order XXI Rule 97 of CPC and passed the impugned order on assumptions and presumptions. In such circumstances, if the order of the executing Court is allowed to stand, it would certainly amount to miscarriage of justice.

9. Having regard to the facts and circumstances of the case, this Court is of considered view that it is a fit case to set aside the impugned order and remand the matter to the executing Court for fresh disposal by following due process of law.

10. In the result, the civil revision petition is allowed, setting aside the order dated 11.12.2017 passed in E.A.No.818 of 2012. The executing Court is hereby directed to dispose of E.A.No.818 of 2012 in E.P.No.251 of 2012 in O.S.No.29 of 2006, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order, without being influenced by any of the observations made hereinabove. If the petitioner fails to co-operate for disposal of the petition, the executing Court is at liberty to proceed with the matter in accordance with law. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 03.8.2018

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