

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2774 OF 2017

ORDER:

This civil revision petition is filed under Section 115 of Code of Civil Procedure (for short "C.P.C.") challenging the order dated 03.03.2017 passed in E.A.No.40 of 2015 in E.P.No.6 of 2015 in O.S.No.464 of 2009 by the XXIV Additional Chief Judge, City Civil Courts, Hyderabad, whereby the petition filed under Section 47 read with Section 151 of C.P.C. was dismissed.

The petitioner herein is the petitioner No.2/Judgment Debtor No.4 before the Executing Court. Petitioners before the Executing Court are the Judgment Debtor (J.Dr.) Nos.3 and 4 and filed petition to order re-delivery of the property covered by 'B' schedule from the respondent No.1/Decree Holder (D.Hr.) as mentioned in the petition, which was wrongly delivered by the Court bailiff beyond the decree schedule property/warrant for delivery dated 07.07.2015 in E.P.No.9 of 2015 alleging that the Execution Petition was filed for delivery of the property to the respondent No.1/Decree holder and delivery warrant dated 07.07.2015 was issued providing police aid for delivery of possession in E.A.No.9 of 2015.

In pursuance of the warrant, on 13.07.2015 the bailiff came to suit schedule property along with police force and without verifying the nature and physical features of the property, existing on the spot and delivered physical possession of the property covered by the 'B' schedule as mentioned in the petition in spite of lawful resistance and objections raised by the petitioners and their

family members. Thus, the delivery of possession of 'B' schedule property annexed to the petition is illegal and irregular.

The details of 'A' schedule property which is appended to the petition is as mentioned in the warrant of delivery of possession. 'B' schedule property is as delivered by the bailiff. As a matter of fact the Court bailiff is liable to hand over the physical possession of schedule of property annexed to the warrant of delivery which is described as 'A' schedule property in this petition. There is lot of difference between 'A' schedule property and 'B' schedule property, and the schedules are mentioned hereunder for better appreciation.

"A" schedule (as mentioned in the warrant of delivery of possession dt. 7-8-2015	"B" schedule (as delivered by the bailiff to the respondent No.1/DHR
All that part and parcel of land bearing Sy.No.2 admeasuring Ac.0.05.06 guntas equivalent to 612.26 sq.yards bearing municipal No.9-4-/62/98 and 9-4-62/99 situated at Bhakthawarguda, Hakeempet (Nizam Colony), Tolichowki, Hyderabad bounded by:- North : House bearing No.9-4-61/A/76/1 of Mr. Jaffar Imam. South : i) House bearing No.9-4-62/100 belonging to hah Gulam Subhani. ii) House bearing No.9-4-62/101 belonging to Shah Gulam Subhani . iii) Road East : House bearing No.9-4-62/96 belonging to Gulam Mahboob Siddiqui. West : Road.	All that part and parcel of land bearing Sy.No.2 admeasuring Ac.0.05.06 guntas equivalent to 616.26 sq.yards bearing municipal No.9-4-/62/99 situated at Bhakthawarguda, Hakeempet (Nizam Colony), Tolichowki, Hyderabad bounded by:- North : House bearing No.9-4-61/A/76/1 of Mr. Jaffar Imam. South : i) House bearing No.9-4-62/100 belonging to Shah Gulam Subhani. ii) House bearing No.9-4-62/101 belonging to Md. Azeemuddin . iii) Road East : House bearing No.9-4-62/96 belonging to Gulam Mahboob Siddiqui. West : Road.

The contention of the petitioner is that he is the owner of the property delivered and that he filed entire documentary evidence in support of the petition in the Execution Petition itself, despite the same the Court below ordered delivery of possession and said order is illegal and prayed for re-delivery of possession of the property.

The respondent filed counter denying the material allegations *inter alia* contending that the petition is vexatious and the petitioners are not entitled to claim relief in the petition.

There is no provision of law to reopen the main execution petition which was terminated, recording full satisfaction of decree on 21.07.2015. The respondent No.1/deed holder filed E.P.No.6 of 2015 on 30.01.2015 under Order XXI Rule 35 of CPC for delivery of possession. In the said petition notices were also issued to the petitioners herein and also to respondent No.2 and 3, but the petitioners had not filed their counter in spite of granting sufficient time. The petitioners preferred appeal before this Court in CCCA.No.26 of 2015 and respondent No.3 preferred appeal in CCA.No.157 of 2015 and filed interlocutory application CCCAMP.No.97 of 2015 in CCCA.No.26 of 2015 dated 11.02.2015 to stay the operation and execution of decree and judgment passed by the trial Court in O.S.No.464 of 2009 including the proceedings in E.P.No.6 of 2015 and E.P.No.7 of 2015 dated 31.01.2015, but those petitions were dismissed by this Court vide order dated 27.02.2015.

After dismissal of the CCCAMP.No.97 of 2015 the petitioners had filed Rev.CCCAMP.No.145 of 2015 and CCCAMP.No.144 of 2015 on 19.03.2015 for review of the orders passed in CCCAMP.No.97 of 2015 and to grant stay of execution of decree and judgment. This Court disposed the petition while directing the Executing Court to proceed with execution proceedings, except demolition of the building in question.

After dismissal of review petition on 24.03.2015 the petitioners got filed E.A.No.8 of 2015 and E.A.No.11 of 2015 in E.P.No.6 of 2015 before the Executing Court through alleged tenants in the suit schedule property namely Mohammed Akther and Mohd.Qasim at the behest of the petitioners with the sole object to defeat the execution of decree and the Court was dismissed both the petitions on 05.06.2015. After dismissal of the petitions, the petitioners filed E.A.No.14 of 2015 on 06.04.2015 through the respondent No.3 who is defendant No.2 in the suit to set aside the order dated 23.02.2015 and E.A.No.15 of 2015 on 06.04.2015 to stay of further proceedings in E.P.No.6 of 2015 on false and untenable grounds and after hearing both counsel the petitions were dismissed on 01.07.2015. The respondent No.1/decreed holder filed criminal complaint in crime No.146 of 2009 against the petitioners and respondent No.2 and 3 on 15.03.2009 and the Humayun Nagar police already filed the charge sheet against the petitioners for the offence punishable under Section 420, 468 and 471 of I.P.C and the same is pending before VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. The petitioners also filed a civil suit in O.S.No.272 of 2015 on the

file of XI Additional Chief Judge, City Civil Court, Hyderabad on 24.04.2015 with the aid of one Mohd Abdul Sayeed, and Mohd Rafeeq for specific performance of contract by creating another false agreement of sale by forging his signature and the same is pending. After filing of O.S.No.273 of 2015 the respondent No.1 lodged a complaint before the VI A.C.M.M. Nampally, Hyderabad on 16.06.2015 and the same was forwarded to the S.H.O. Humayun Nagar, P.S. against the petitioners, respondent No.2 and 3 (defendants 1 to 4 in O.S.No.464 of 2009) Mohd. Abdul Sayeed, Mohd. Rafeeq (plaintiff in O.S.No.273 of 2015) Mirza Amjad Baig and M.Basith Ali and the police Humayun Nagar issued FIR in crime No.209 of 2015 on 16.07.2015 for the offence punishable under Section 120-B, 420, 457 and 471 read with Section 34 of I.P.C. and the same is under investigation. The petitioner had not got any stay orders in their appeal in CCCA.No.26 of 2015 and they filed another CCCA.No.157 of 2015 dated 21.04.2015 on behalf of respondent No.3 and the same is pending. The respondent No.1/decree holder filed suit in O.S.No.464 of 2009 on 04.08.2009, along with the suit, the respondent No.1 filed an I.A.No.2745 of 2009 to grant ad-interim injunction restraining the respondents therein (petitioners herein being respondents 3 and 4 and respondents 2 and 3 herein being respondents 1 and 2 from proceeding with any construction work by way of digging any pits and raising any construction and changing the shape of suit schedule property, pending disposal of the main suit. The III Additional Chief Judge, City Civil Court, Hyderabad granted status quo order on 13-10-2009 till 16.12.2009 and the same was extended till 16-12-2009 and was in force till the judgment and

decree passed in the main suit. As the petitioners and respondent No.2 and 3 (defendants 1 to 4) continued construction activities disobeying the order of the Court, therefore the respondent No.1/deGREE holder filed I.A.No.4391 of 2009 on 16.11.2009 to commit the respondents to civil prison for disobedience of the status quo order. The petitioners herein as respondent No.2 and 3 have clearly mentioned in the counter dated 08.10.2010 filed by them that they have not made any construction after the status quo orders were passed and they are strictly complying the order of the Court. The petitioners were not obeying the status quo order, the respondent No1/deGREE holder filed I.A.No.4393 of 2009 praying the Court to grant police aid and direct the station house officer, Humayun nagar to provide police aid for proper implementation of the status quo order dated 13.10.2009 granted by the Court in I.A.No.2745 of 2009 and the Court allowed the petition on 29.04.2010 and the Court issued warrant to provide police protection, by the S.H.O. Police Station, Humayun nagar. Accordingly the construction was stopped with police assistance on 06.07.2010.

During the pendency of O.S.No.464 of 2009 and the status quo was in force the petitioners suppressing these facts and filed O.S.No.1013 of 2010 dated 16.03.2010 against the GHMC, Hyderabad on the file of VI Junior Civil Judge, City Civil Court, Hyderabad for the relief of perpetual injunction restraining them from interfering with construction work without impleading the respondent No.1. The respondent No.1/deGREE holder had filed implead petition vide I.A.No. 834 of 2010. After filing implead

petition they had withdrawn the suit as not pressed on 18.11.2010. After dismissal of O.S.No.1013 of 2010 the petitioners filed W.P.No.30688 of 2010 on 6.12.2010 before this Court against GHMC, Hyderabad for the same relief suppressing the factum of dismissal of O.S.No.1013 of 2010 and pendency of O.S.No.464 of 2009 and without impleading the respondent No.1/deGREE holder. On coming to know the same the respondent No.1 filed implead petition vide W.P.M.P.No.18934 of 2011 dated 07.06.2011, this Court dismissed the W.P.No.30688 of 2010 on 25-8-2011. After dismissal of W.P.No.30688 of 2010 the petitioners again filed another civil suit in O.S.No.2769 of 2011 dated 11.11.2011 on the file of VI Junior Civil Judge, City Civil Court, Hyderabad against GHMC, Hyderabad for the same relief of perpetual injunction as in O.S.No.1013 of 2010 and W.P.No.30688 of 2010 and suppressing the fact and pendency of O.S.No.464 of 2009, dismissal of W.P.No.30688 of 2010 and without impleading the respondent No.1 as party. Having come to know of the same, the respondent No.1 had filed implead petitions I.A.No.830 of 2011 and I.A.No.831 of 2011 dated 14.12.2011 and they were allowed. The respondent No.1 was impleaded as defendant No.2. After due trail, the VI Junior Civil Judge, City Civil Court dismissed the suit on 08.04.2013. After dismissal of all the pending petitions issued warrant of delivery of possession on 18.03.2015. Accordingly on 27.03.2015 the respondent No.1 went to the suit schedule property along with the Court bailiff to take possession of the suit schedule property but the petitioners gathered some men and women folk on the suit schedule property and they resisted and obstructed the bailiff to deliver the possession. They also man handled the

respondent No.1 and also threatened him with dire consequences in case he turn up again. There was likelihood of breach of peace, the respondent No.1 had not taken possession of the suit schedule property. They had also locked two gates. The court bailiff thus returned the warrant of delivery of possession without executing the warrant, along with his report. The respondent No.1 had filed E.A.No.9 of 2015 on 31.03.2015 to grant permission to the bailiff to break open the locks and E.A.No.10 of 2015 on 31.03.2015 to grant police aid directing the Inspector of Police, Police Station Humayun nagar to provide necessary police aid including the women police for peaceful execution of warrant of delivery of possession, both petitions were allowed on 07.07.2015 and granted the reliefs to break open locks and also to grant police aid, issued fresh warrant of delivery of possession on 07.07.2015.

In execution of the fresh warrant of delivery of possession dated 07.07.2015, the respondent No.1 accompanied with the Court bailiff and police to the schedule property on 13.07.2015. The watchman of the petitioners and supervisor by name Abdulla Ali Yemani were present at the suit schedule property and they had unlocked the two gates of the schedule property and removed all the belongings kept there by the petitioner with the help of labours and vacated the suit schedule property and the bailiff of the court delivered vacant physical possession of the suit schedule property bearing Sy.No.2 admeasuring 612.26 sq.yards together with building bearing municipal No.9-4-62/98 and 9-4-62/99 situated at Bhakthawarguda, Hakeempet (Nizam colony)

Tolichowki, Hyderabad along with existing structures and the respondent No.1 had taken the possession thereof.

It is specifically contended that the structures were raised by the petitioners and respondents 2 and 3 (defendants 1 to 4 in O.S.No.464 of 2009) illegally and unauthorizedly in spite of the order of the Court not to raise any construction, only with the sole object to create troubles to the respondent No.1. The said structures which are liable to be demolished are not demolished only in view of the orders of the Court as stated supra. The bailiff delivered possession of the suit schedule property as under:

“All that part and parcel of land bearing Sy.No.2 admeasuring Ac.0.05.06 guntas equivalent to 612.26 sq.yards bearing municipal No.9-4-62/98 and 9-4-62/99 situated at Bhakthawarguda, Hakeempet (Nizam Colony), Tolichowki, Hyderabad bounded by:-

North : House bearing No.9-4-61/A/76/1 of
Mr. Jaffar Imam.

South: i) House bearing No.9-4-62/100 belonging to
Shah Gulam Subhani.

ii) House bearing No.9-4-62/101 belonging to
Md. Azeemuddin.

iii) Road

East : House bearing No.9-4-62/96 belonging to
Gulam Mahboob Siddiqui .

West : Road.

along with existing structures thereon in an extent of 612.26 sq.yards.”

After delivery of possession the respondent No.1 had filed full satisfaction memo on 21.07.2015 and E.P was closed on the same day recording full satisfaction. The present petition is filed only to multiply the litigation and to harass the respondent No.1 only. The petitioners have no locus standi to file the present petition and the petition is liable to be dismissed. The Court had delivered the correct suit schedule property strictly in compliance with the boundaries and extent specified in the warrant of delivery of possession.

The contention of the petitioners that the respondent No.1 had taken possession of 616 .26 sq.yards is not correct and denied by the respondent No.1. That the respondent No.1 was delivered suit schedule property bearing municipal No.9-4-61/A/67/1 admeasuring 122 sq.yards equivalent to 102 sq.mtrs and that THE said property was purchased by the son of the petitioner is false and baseless. The respondent No.1 had taken possession of 612.26 sq.yards only. The petition filed under Section 47 (1) read with Section 151 of CPC for redelivery of the property, mentioned in "B" schedule is not at all maintainable and prayed to dismiss the petition.

The Executing Court after conducting necessary enquiry dismissed the petition holding that the petition is not maintainable as the claim of the petitioners is barred by limitation and the petitioners have no locus standi to file the petition on the ground that the property was purchased by the son of the petitioner No.1.

Aggrieved by the order and decreetal order passed by the Executing Court, the present revision is filed mainly on the ground that the identity of the property by the bailiff with reference to the schedule annexed to the warrant of delivery is not correct and the 'B' schedule property is no way concerned in any manner whatsoever to the respondent/decreet holder and the same is not a schedule property in O.S.No.464 of 2009, but the Court failed to consider the request of the petitioner and erroneously ordered to deliver the property other than suit schedule property an extent of 122 sq.yards, which is not a part and parcel of the suit schedule property and cannot be delivered to the Decree Holder, and when the Executing Court committed error, this Court can exercise power under Section 115 of C.P.C. and set aside the order passed by the Court below.

Sri Ch.Janardhan Reddy, learned counsel for the petitioner, reiterated the contentions urged in the petition before the Executing Court about the delivery of property in excess extent and contended that when the respondent No.1 obtained possession of the property in excess of the claim in the suit, the claim of the petitioner is to be enquired into for re-deliver the property and prayed to set aside the order.

Learned counsel for the respondent No.1 supported the order in all respects and pointed out the conduct of the petitioner through out the proceedings by filing vexatious suits and petitions and got the delivery of the property delayed, thereby the petitioner does not deserve any sympathy and prayed for dismissal of the revision confirming the order passed by the Executing Court.

Considering rival contentions and perusing the order under challenge, the points that arise for consideration are:

- (1) Whether the petitioner is entitled to recover the possession of the property by reopening the Execution Petition after its termination, by invoking Sections 47 and 151 of C.P.C.?***
- (2) Whether the claim of the petitioner is barred by limitation?***

P O I N T No.1:

In view of the facts narrated above, the relief claimed in the petition is clear and the same is extracted hereunder:

“..... may be pleased to order re-delivery of the property covered by ‘B’ schedule property as mentioned hereunder from the respondent No.1/DHR which was wrongly delivered by the Court bailiff beyond the decree schedule property/warrant of possession dt.07.07.2015 in E.P.No.9 of 2015.....”

The relief claimed in the petition is specific that the property shown in ‘B’ schedule was delivered wrongly by the bailiff of the Court and sought re-delivery of possession alleging that the petitioner is the owner and part of ‘B’ schedule property i.e. 122 sq.yards was purchased by his son, but the schedule of property annexed to the plaint and decree is 612.26 sq.yards bearing No.9-4-62/98 and 9-4-62/99 situated at Bhakthawarguda, Kakeempet (Now Nizam Colony), Tolichowki, Hyderabad within the following boundaries.

‘A’ Schedule

North : House bearing No.9-4-61/A/76/1 of Mr. Jaffar Imam.

South: i) House bearing No.9-4-62/100 belonging to Shah Gulam Subhani.

ii) House bearing No.9-4-62/101 belonging to Shah Gulam Subhani .

iii) Road

East : House bearing No.9-4-62/96 belonging to Gulam Mahboob Siddiqui.

West : Road.

‘B’ Schedule

All that part and parcel of land bearing Sy.No.2 admeasuring Ac.0.05.06 guntas equivalent to 616.26 sq.yards bearing municipal No.9-4-/62/99 situated at Bhakthawarguda, Hakeempet (Nizam Colony), Tolichowki, Hyderabad bounded by:-

North : House bearing No.9-4-61/A/76/1 of Mr. Jaffar Imam.

South: i) House bearing No.9-4-62/100 belonging to Shah Gulam Subhani.

ii) House bearing No.9-4-62/101 belonging to Md. Azeemuddin .

iii) Road

East : House bearing No.9-4-62/96 belonging to Gulam Mahboob Siddiqui .

West : Road.

The boundaries of North and South, East and West are one and the same and the boundaries are specific for both ‘A’ and ‘B’ schedule property except a fraction of difference in extent. It is difficult to conclude that the delivery claimed in the Execution

Petition and property delivered is not one and the same. The difference is only 4 sq.yards. In the 'A' schedule, the extent was mentioned as 612.26 sq.yards and 'B' schedule is 616.26 sq.yards.

There is absolutely no material difference in the identification of the property, but the petitioner invented a different story to take advantage of variation of 4 sq. yards in the extent mentioned in the warrant and the actual extent, but the door numbers, boundaries and area is one and the same.

The general principle of evidence under Section 95 of Evidence Act is that when there is a dispute with regard to extent, boundaries will prevail and if boundaries are in dispute, the extent will prevail.

In "**Chitturi Perraju v. Yednapudi Venkamma**"¹ this Court held as follows:

"It is well settled that even if there is some discrepancy about the actual extent of the land, the boundaries prevail."

Here, in this case, the dispute is only with regard to extent of '4' square yards. Therefore, there is no material variation in the extent except calculation mistake in converting guntas into square yards. Hence, I find absolutely no variation with regard to the extent and boundaries, on that ground the petitioner is not entitled to claim relief in the present petition.

The main grievance of the petitioner is that the property delivered is not the suit schedule property in view of minor

¹ AIR 1971 Andhra Pradesh 74

variation of 4 square yards in extent when guntas are converted into square yards and sought for re-delivery of the property. The executing Court held that the petitioner has no *locus standi*, but the Court did not decide whether the claim of the petitioner would fall within Section 47 of C.P.C. or not?

Section 47 of C.P.C. permits the Court to decide any question relating to execution, discharge or satisfaction of the decree. Where there is a question as to delivery of possession, such question is one relating to execution, discharge or satisfaction of the decree. Therefore, the question of delivery of possession, which is the subject-matter of the suit, arises between the parties to the suit in which the decree was passed and as it relates to the execution, discharge and satisfaction of the decree, the claim must be under Section 47 of C.P.C. and the limitation for filing petition under Section 47 of C.P.C. is governed by Article 134 of Limitation Act as held by this Court in “**Thimmareddi Venkataramana Reddy v. Chelamacherla Raghava Reddy**²”

Though the petition is filed under Section 47 and 151 of C.P.C. virtually it is an objection as to delivery of possession and for re-delivery of the property to the petitioner, when such question was raised regarding re-delivery objecting delivery of possession, relevant provisions applicable to such petition is under Order XXI Rule 97, 98 and 99 of C.P.C., but not under Section 47 of C.P.C.

Order XXI Rule 98, 99 and 101 of C.P.C. deals with removal of obstruction or objection to delivery etc.

² 1978 (1) AWR 526

In “**Sameer Singh v. Abdul Rab**³” the Apex Court has decided identical issue and few facts of the said case are necessary for deciding the controversy in the present petition.

The Executing Court after receipt of the decree on 23.8.2006 issued notice to the 4th Respondent by registered post and when the service was not effected, mode of publication was taken recourse to for appearance of the judgment-debtor. Eventually, the execution case was fixed for ex parte hearing on 9.3.2007 on the petition of the assignee-decree-holder. After following the procedure, the schedule property was put up for sale by way of auction and ultimately Abdul Rafai, Respondent No. 2, purchased the property and pursuant to the order of the Court took over possession of the said immovable property. At this stage, an application under Order XXI Rules 97, 99 and 101 of C.P.C. was filed contending that the disputed property originally belonged to the 4th Respondent who had borrowed a sum of Rs. 14,571/- from his deceased father, Gopal Singh, by depositing the sale deeds of the said property on 18.2.1971 at Calcutta and had delivered possession of the said property to Gopal Singh on 19.2.1971 in lieu of interest of said borrowed amount. When he failed to pay the borrowed sum, the 4th Respondent agreed to transfer the said property for a consideration of Rs. 25,000/- to Gopal Singh after adjusting the borrowed amount i.e. Rs.14,571/-. Regard being had to the said arrangement, Gopal Singh had paid the balance amount of Rs.10,429/- and accordingly an agreement for sale was executed. When the 4th Respondent did not honour his part of the

³ AIR 2015 SC 591

contract, Gopal Singh instituted Title Suit No. 43 of 1974 in the Court of Sub Judge-I, Jamshedpur against the 4th Respondent and eventually the said suit was decreed by the Second Additional Sub Judge-I on 14.5.1977. Thereafter, a case was filed and in pursuance of the decree a sale deed was executed on 10.10.1982 in favour of the father of the Appellants through Court and he was put in possession through Nazir of the Civil Court in respect of the property in question, and after the demise of Gopal Singh, the Appellants, being sons, inherited the said property and remained in possession having right, title and interest till 27.4.2008 when all of a sudden, Respondent No. 2 through the help of Nazir took delivery of the property after dispossessing the Appellants therefrom. Petition was filed under Section 151 of C.P.C. for re-delivery of the property, but the Court held that the Court cannot exercise such jurisdiction for re-delivery of the property. When the matter reached Apex Court, the Apex Court while adverting to law laid down by Apex Court in the earlier judgments including the judgment in “**Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal**”⁴ held that the petition would fall within Order XXI Rules 97 and 99 of C.P.C. and extracted the findings in “**Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal**” (referred above), wherein it was held as follows:

“.....a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can

⁴ AIR 1997 SC 856

be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him.”

Following the said principle, the Apex Court in “**Sameer Singh v. Abdul Rab**” (referred above) made it clear that the Court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained Code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order XXI, Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon Under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its

inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. In the instant case the executing court has expressed an opinion that it has become functus officio and hence, it cannot initiate or launch any enquiry. The Appellants therein had invoked the jurisdiction of the High Court Under Article 227 of the Constitution assailing the order passed by the executing court on the foundation that it had failed to exercise the jurisdiction vested in it. The Appellants therein had approached the High Court as per the dictum laid down in “**Surya Dev Rai v. Ram Chander Rai**”⁵. The Apex Court finally concluded that the Court has jurisdiction and directed to decide the matter remanding the matter to the High Court.

From the law declared in “**Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal**” (referred above) and reiterated in “**Sameer Singh v. Abdul Rab**” (referred above), it is clear that when a party to the proceedings or a third party, who was dispossessed from the property and his claim is based on title, right and interest the remedy available to such person is under Order XXI Rule 97 and not under Section 47 of C.P.C. Even if, a petition is filed under Section 47 and 151 of C.P.C., it shall be treated as a petition filed under Order XXI Rule 97 of C.P.C. and the Court is required to adjudicate the claim as it is a suit in view of Order XXI Rule 97 C.P.C.

Therefore, the claim of this petitioner would fall under Order XXI Rule 97 of C.P.C. not under Section 47 and 151 of C.P.C. as the petitioner seeking re-delivery of the property by applying the

⁵ (2003) 6 SCC 675

principles laid down in “**Sameer Singh v. Abdul Rab**” (referred above) referred supra. Hence, I hold that the petition is virtually a petition under Order XXI Rule 97 of C.P.C. as the obstruction or resistance made by Decree Holder himself, but not under Section 47 of C.P.C. Accordingly, the point is answered.

P O I N T No.2:

The main reason for dismissal of application by the Executing Court is that the claim of the petitioner is barred by limitation.

Undisputedly, the petitioner claimed recovery of possession on the ground that he was dispossessed illegally in execution of the decree by the bailiff on 13.07.2015. For re-delivery of possession to a person, who was illegally dispossessed from immovable property, the relevant article as per Limitation Act is Article 129, but the Court held that the claim of the petitioner is barred in view of Article 128 of Limitation Act. As per Article 128 of Limitation Act, for possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree, limitation is 30 days and it starts from the date of the dispossession.

As per Article 129 of Limitation Act, for possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree, limitation is 30 days and it starts from the date of resistance or obstruction.

In the present case, the petitioners resisted the delivery of possession, thereupon the Decree Holder filed an application E.A.No.9 of 2015 for removal of obstruction and for grant of police aid and obtained order. The Court provided police aid to the bailiff to execute the decree for delivery of possession after removing obstruction. Therefore, Article 129 of Limitation Act is applicable to the present facts of the case and the limitation starts from the date of resistance or obstruction.

The obstruction was raised long before delivery of possession, but the petition was filed on 07.12.2015, though the delivery was effected on 13.07.2015 i.e. almost after 4 months 24 days from the date of delivery, after removing the obstructions to the execution to deliver the property in execution petition. In view of Article 129 of Limitation Act, when the petitioner raised obstruction for delivery of possession of property in execution of decree, limitation starts from the date of resistance or obstruction. Therefore, the petition is hopelessly barred by limitation as application was filed beyond 30 days prescribed under Article 129 of Limitation Act or even assuming for a moment that Article 128 of Limitation Act is applicable, it is hopelessly barred by limitation.

Therefore, the trial Court rightly concluded that the petition is barred by limitation.

In view of judgment in “**Sameer Singh v. Abdul Rab**” (referred above), the petition is deemed to be petition under Order XXI Rule 97 or 99 at least, it is governed by Article 129 of Limitation Act, but the petition was filed after long lapse of time

from the date of resistance. Therefore, the petitioner is disentitled to claim re-delivery of the property on the ground that there is variation of '4' sq.yards in the extent as discussed in the earlier paragraphs. Hence, I find that the petition filed by the petitioner is virtually a claim under Order XXI Rule 97 or 99 of C.P.C. and it is barred by limitation in views of Article 129 of Limitation Act. Accordingly, the point is answered.

As discussed above, the claim of the petitioner is barred by limitation, the factual aspects needs no further consideration. However, the jurisdiction of this Court under Section 115 of C.P.C. is limited and this Court can exercise jurisdiction under Section 115 of C.P.C. only when the Court below exercised its jurisdiction, which is not vested or failed to exercise jurisdiction which is vested on it or exercised jurisdiction irregularly or illegally. In the present facts of the case, the contentions urged in the grounds of revision would not fall within the ambit of Section 115 of C.P.C. On this ground also, the revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

04.04.2018
Ksp