

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

CRP No.1262 of 2018

Between:

ALLURI VENKATA RAMIACHI RAJU

...Petitioner

AND

CHADALAVADA SAKUNTHALA DEVI (DIED) & OTHERS

...Respondents

DATE OF JUDGMENT PRONOUNCED: 06-04-2018

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to
see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

*THE HON' BLE SRI JUSTICE A. RAJASHEKER REDDY

+ CRP No.1262 of 2018

%06-04-2018

ALLURI VENKATA RAMIACHI RAJU

...Petitioners

VERSUS

\$ CHADALAVADA SAKUNTHALA DEVI (DIED) & OTHERS

...Respondents

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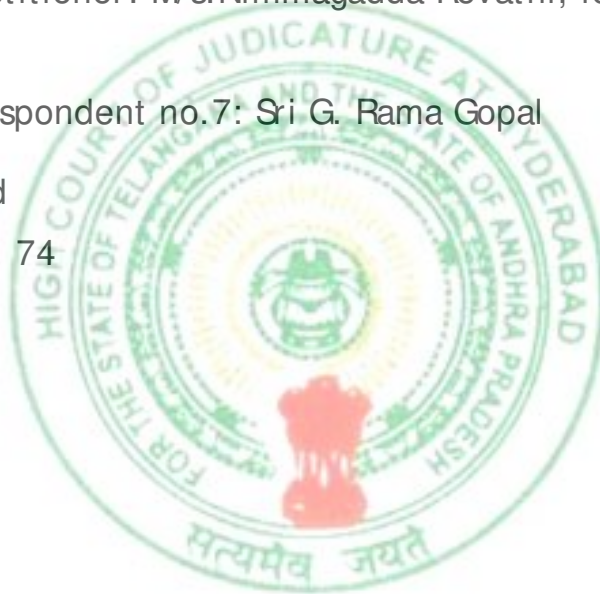
> HEAD NOTE:

! Counsel for Petitioner: M/s.Nimmagadda Revathi, learned counsel for the petitioner

^Counsel for Respondent no.7: Sri G. Rama Gopal

? Cases referred

1. AIR 2004 Cal. 74



HON'BLE SRI JUSTICE A.RAJASHEKER REDDYCRP No.1262 of 2018ORDER:

This civil revision petition is filed against the order dated 17-11-2017 passed in EP No.378 of 2008 in ATC No. 35 of 1986 whereby and whereunder the trial Court after recording delivery of the EP schedule property is effected, terminated the EP.

2. The legal heirs of 4th plaintiff (since deceased) filed EP 378 of 2008 to effect delivery of the EP schedule property and by the impugned order, the EP is terminated upon delivery of the property. The revision petitioner herein is a third-party and not a party to the EP proceedings, much less a party to the proceedings in ATC No.35 of 1986.

3. Learned counsel for the petitioner contends that the decree in ATC No.35 of 1986 was passed in favour of five plaintiffs and since all of them have died, the EP filed only by legal heirs of 4th plaintiff is not maintainable as he is entitled to only 1/5th share of the EP schedule property.

Learned counsel referred to Order 21, Rule 15 CPC which speaks of application for execution by joint degree holders, where a decree has been passed jointly in favour of more persons than one, and any one or more of such persons may, apply for the execution of the whole decree for the benefit of all of them, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased and where the Court sees sufficient cause for allowing the decree to be executed on an application, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application. Learned counsel contends that without protecting the interest of the sharers of other four plaintiffs, the trial Court terminated the EP by recording delivery of property in favour of the petitioners in the EP, i.e. legal heirs of the 4th plaintiff alone. Learned counsel also submits that the petitioner has purchased the other four shares of the deceased plaintiffs, except the share of the 4th plaintiff.

Learned counsel also referred to Order 21, Rule 101 CPC and contends that all questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding, on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall be deemed to have jurisdiction to decide such questions, and therefore, the impugned order is liable to be set aside.

4. Learned counsel for the 7th respondent (petitioner in the EP) on the other hand, submits that inasmuch as the petitioner claims to have purchased four shares in the EP schedule property, in respect of other four plaintiffs, he has purchased the same during the pendency of the EP proceedings, and therefore, the only course open for the petitioner was to file a separate suit and establish his right, title and the entitlement or otherwise of the EP schedule

property being the purchaser of the shares of the other four plaintiffs. Learned counsel also stated that delivery is recorded and consequently the EP is terminated, and nothing adverse was observed affecting the rights and interests of the other four plaintiffs and the petitioner, as well can work out his legal remedies. Learned counsel further submits that the petitioner is not a party to the proceedings, it is not open for him to assail the validity of the impugned order, and therefore, the civil revision petition is liable to be dismissed.

5. It is to be seen that Order 21, Rule 101 CPC speaks of questions to be determined in case of disputes between the parties to a proceeding or their representatives. On a reading of Rule 101, it is understood that all questions, including questions relating to right, title or interest in the property, arising between the parties to a proceeding on an application under Rule 97 or Rule 99, or their representatives, and relevant to the adjudication of the

application, shall be determined by the Court dealing with the application, and not by a separate suit and for that purpose, the Court shall be deemed to have jurisdiction to decide such questions. Rule 101 specifically stipulates that parties to the proceedings or their representatives can make an application under Rules 97 or 99, in case of disputes as to all questions including right, title or interest in the property. The petitioner is stated to be purchaser of the four shares in respect of four plaintiffs, except the 4th plaintiff, admittedly during the pendency of the EP proceedings. Neither the petitioner, with the leave of the Court nor the LRs of the other plaintiffs have come on record in the EP proceedings, though the EP is of the year 2008. It is also stated that possession of the EP schedule property is delivered to the petitioners in the EP, LRs of 4th plaintiff. A perusal of Order 21, Rule 15 CPC, it is clear that EP is maintainable by all joint degree holders jointly or by any one of them. None of the LRs of the other four plaintiffs

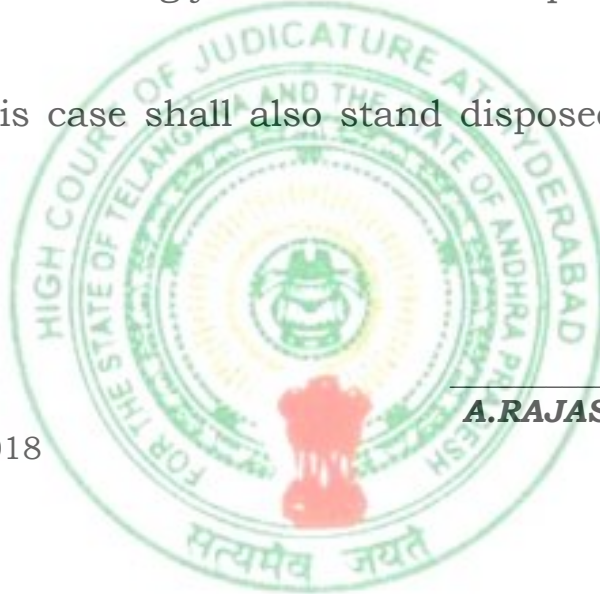
complain to the Court that the interest of the other plaintiffs, who have not joined in the application, has not been protected. The impugned order is challenged by a third party who is not a party to the proceedings. Order 21, Rule 97 CPC relates to obstruction created by the person in possession of the property to the holder of a decree of that property and in such circumstances, the decree holder can make an application under this rule complaining of such obstruction. Admittedly, the petitioner is not in possession of the property. Rule 99 relates to making a complaint to the Court against dispossession of the immovable property by the person in possession of the property by the holder of a decree or purchaser thereof. As observed, the petitioner is not a party to the proceedings muchless he is in possession of the property, except claiming the property through the other four plaintiffs. It is true that an application under Order 21, Rule 99 CPC is an independent application and filing of such an application is not dependent upon

pendency of any execution proceeding and there is no bar to make an application after delivery of possession of property is made in execution of a decree, (***see MINALI GHOSE vs. LAKSHMI NARAYANA SARKAR, AIR 2004 Cal. 74***), but applications under Rules 97 and 99 are subject to Rule 101 wherein it is stated that all disputes as to right, title or interest in the property is to be made arising between the parties to the proceedings or their representatives. In this case though it is stated petitioner is a representative of the other four plaintiffs having purchased their share of property, he could not come on record during the pendency of the proceedings and he is not a party to the EP proceedings as such Order 21, Rules 99 or 101 CPC has no application to the facts of the case. I find force in the contention of the learned counsel for the 7th respondent (petitioner in EP proceedings) that inasmuch as possession of the EP schedule property is delivered to 7th respondent, who is representative of 4th plaintiff, and he can take

possession of the EP schedule property either jointly or individually, the only course open to the revision petitioner is to file a separate suit and get adjudicated his rights if any accrued through the other four plaintiffs-decree holders.

6. In view of above facts and circumstances, no relief can be granted in this case. The civil revision petition is disposed of accordingly. Miscellaneous petitions if any pending in this case shall also stand disposed of. No order as to costs.

Dated: 06-04-2018
NRG



A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.1262 OF 2018

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Date: 06-04-2018

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