

THE HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.1690 of 2018

ORDER :

The petitioner/J.Dr. No.3 aggrieved by the order dated 27.2.2018 in E.P. No.7 of 2015 in O.S. No.7 of 1980 passed by the Junior Civil Judge of Adilabad District at Bhainsa, preferred this appeal.

2. The brief facts of the case are that the 1st respondent filed E.P. No.7 of 2015 under Order 21 Rule 35 C.P.C. seeking to direct the Judgment Debtors to deliver the possession of portion-B property allotted to the decree holder in the suit mulgi, as the executing petitioner has purchased the same from the decree holder through a registered sale deed dated 27.5.2015. He further sought permission to construct portion wall dividing the portion 'A' and 'B' for better enjoyment of the mulgi. The petitioner is not a party to the O.S. No.7 of 1980 for partition. The suit is decreed, against which the Judgment Debtors preferred A.S. No.1 of 1986, which was dismissed on 13.11.1992. Aggrieved by the same, they filed S.A. No.63 of 1993 before the High Court and the same was also dismissed in the year 2002.

3. Maruthi Bele, vendor of the executing petitioner, filed a final decree application in I.A. No.90 of 2006, wherein a final decree

was passed on 15.9.2008 and portion-B property was allotted to the plaintiff by delivering the possession of respective half share.

4. Thereafter, the executing petitioner purchased portion-B property under a registered sale deed dated 27.5.2015 from Maruthi Bele-Decree Holder. Notices were served on all the judgment-debtors in the present E.P. No.7 of 2015. Except Judgment Debtor No.3, all others were set ex parte. The Judgment Debtor No.3 filed counter and opposed execution in E.P. No.7 of 2015 on the ground that the petitioner is not a party to the suit, therefore, has no locus standi to execute decree against the Judgment Debtor No.3. The property in the premises bearing Municipal No.4-3-123 is in possession of the Judgment Debtor No.3 as a tenant, who is party to the suit O.S. No.7 of 1980. When Maruthi Bele, the vendor of the petitioner and Rama Rao Bele and others tried to interfere with the possession and enjoyment of the Judgment Debtor No.3, he filed O.S. No.3 of 2009 and obtained an ad interim temporary injunction which was made absolute. Against which C.M.A. No.1 of 2009 was filed and the same was dismissed on 30.10.2015 and the said temporary injunction orders are in force.

5. As per the contents of the registered sale deed dated 27.5.2015, there is no pendency of the civil litigation in the court of law, though litigation is pending. It is also recited that possession was delivered to the petitioner, but as per the averments of the petition, the assertion of the petitioner for delivery of symbolic possession of mulgi is contrary. The contents of the registered sale deed and the reliefs

sought by the petitioner in the petition are contradicting to each other. The execution petition ought not to have been filed by the petitioner, who is not impleaded in any capacity of whatsoever nature and there is no inherent right or cause of action for the petitioner purporting to be decree holder to file the execution petition. Even such right is not available to the actual legal heir of deceased decree holder in the absence of obtaining succession certificate as legal heirs and they cannot file the execution petition, unless they are legal heirs upon the death of their predecessor.

6. In view of the rival contentions now the points that arise for determination are :

- i) Whether the respondent/petitioner – P.Prabodh Kumar has locus standi to file the petition and such petition is maintainable? and
- ii) Whether the impugned order suffers from any legal infirmities warranting interference in the revision?

7. The contention of the revision petitioner is that the petitioner Prabodh Kumar has no locus standi to file the E.P. as a matter of right invoking the Section 146 C.P.C. He cannot seek vacant possession of schedule 'B' property, as the revision petitioner is a tenant, except under due process of law.

8. *Per contra* the purchaser from the original decree holder who launched the E.P. No.7 of 2015 contends that under Section 146 C.P.C. he has right to file an execution petition, as it is a transfer of the property and he is a transferee, under Section 146 C.P.C., more

particularly, when there is nothing in Order 21 rule 16 precluding the transferee from filing execution petition.

9. The undisputed facts spell out from the record are that the revision petitioner is a J.Dr. No.3 in O.S. No.7 of 1980 who suffered a decree for partition along with other J.Drs.

10. It is also a fact that O.S. No.7 of 1980 was decreed on 20-11-1985. The vendor of the petitioner in E.P. No.7 of 2015 is one Maruthi Bele, who filed O.S. No.7 of 1980. The suit O.S. No.7 of 1980 was decreed for partition of the suit mulgi bearing No.2-71-111 (new No.4-3-123). Aggrieved by the same, A.S. No.1 of 1986 was preferred and the same was dismissed on 13.11.1992. Aggrieved by the same, the Judgment Debtor preferred S.A. No.63 of 1993, which was also dismissed in the year 2002.

11. It is also a fact that Maruthi Bele, the vendor of the 1st respondent herein, filed the petition in I.A. No.90 of 2006 for passing a final decree of partition. Accordingly, final decree was passed on 15.9.2008, which is marked as Ex.P1 and portion-B property i.e., petition schedule property was allotted to Maruthi Bele, the vendor of the petitioner, by delivering the possession of half share by due process of law. Only thereafter, on 27.5.2015 the executing petitioner purchased the property under Ex.P2 – Photostat copy of registered sale deed. Therefore, there is no substance in the contention of the petitioner/J.Dr. No.3 that the sale deed under Ex.P2 was while pending litigation. Even the Second Appeal No.63 of 1993 preferred against

the order in A.S. No.1 of 1986, dated 13.11.1992 was dismissed in the year 2002. Whereas, registered sale deed under Ex.P2 executed by the decree holder/Maruthi Bele was on 27.5.2015.

12. It is also not in dispute that the revision petitioner/J.Dr. No.3 filed O.S. No.3 of 2009 against Maruthi Bele, vendor of the executing petitioner and Rama Rao Bele and Others, who are landlords of the entire property in mulgi Municipal bearing No.2-71-111 (old) and No.4-3-123 (new) for permanent injunction restraining them from dispossessing and evicting him, wherein an ad interim injunction was also granted and the same was made absolute. Ex.R1 dated 19.1.2009 is the certified copy of the ex parte temporary injunction order; Ex.R2 is the certified copy of the proof affidavit filed along with O.S. No.3 of 2009 and Ex.R3 is the certified copy of the plaint in O.S. No.3 of 2009. Aggrieved by the same, C.M.A. No.1 of 2009 was filed and the same was dismissed on 30.10.2015, therefore, the said temporary injunction orders are subsisting and there is no dispute with regard to the same.

13. The further contention of the petitioner/J.Dr. No.3 is that there is contradicting plea when the contents of the registered sale deed dated 27.5.2015 read with the contention of the petitioner in E.P. wherein he sought symbolic possession of mulgi, for which there is no subsisting evidence.

14. It is also a fact that when the decree holder dies, the legal heirs have to file an application. But, in the instant case, this petition is not as a legal heir upon the death of a decree holder. The petitioner is

claiming his right as a purchaser of the share of the decree holder as a transferee of the rights.

15. As already discussed above, the petitioner in E.P. No.7 of 2015 is neither party to the suit nor decree in O.S. No.7 of 1980. The vendor of the executing petitioner filed final decree in I.A. No.90 of 2006 in O.S. No.7 of 1980 and obtained final decree on 15.9.2008. Subsequently only he sold the property to the executing petitioner. It is also a fact that ad interim injunction granted on 19.1.2009 as per orders in Ex.R1 was made absolute and the C.M.A. No.1 of 2009 filed against the said order was also dismissed on 30.10.2015.

16. Section 146 C.P.C. reads as follows :

"146. Proceedings by or against representatives -Save as otherwise provided by this Court or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or application may be made by or against any person claiming under him."

17. A plain reading of Section 146 C.P.C. made it clear that a person claiming under the decree holder can continue the executive proceedings started by any other person under whom he claims right over the property purchased by him. Since the petitioner in E.P. No.7 of 2015 purchased the property under Ex.P2 from the decree holder under registered sale deed dated 27.5.2015 subsequent to passing of final decree in I.A. No.90 of 2006 in O.S. No.7 of 1980, dated 15.9.2008, he acquired right over the portion-B schedule property in

the said decree. When once the decree holder alienated his right over the property acquired under the decree, the executing petitioner/purchaser shall acquire all the rights over the property, which his vendor acquired under a final decree in a suit for partition.

18. The same is supported by the decision in the case of ***Satyanarayan Vs. Sindhu Bai Sharma*** (AIR 1965 AP 81) which was relied on by the trial Court. As per the said decision, the transferee of the subject matter of the decree can continue the execution petition if it is clearly filed by the transferor-decree holder or can file fresh execution petition on the ground that he is such a transferee under Section 146 C.P.C.

19. A reading of Order 21 Rule 16 made it clear that there is nothing in this Rule 16 of Order 21 precluding the transferee from filing an execution petition basing on the decree obtained by the vendor.

20. In another case in the case of ***Gnanasundaram and another Vs. Murugesu Naicker*** (AIR 1989 Madras 343) the Hon'ble Madras High Court held that Order 21 Rule 16 C.P.C. will not apply because the Will does not assign the decree; in fact, it does not refer to the suit at all. Even then the E.P. is maintainable under Section 146 C.P.C.

21. In the case of ***Ambika Prosad Sexena Vs. Sm. Bhagirathi Debi Agarwalla and Others*** (AIR 1968 Calcutta 242) it was held that

legal representative of the original decree holders or a person claiming under them under Section 146 C.P.C. would also include even the right to continue a pending proceeding.

22. From the above decisions, when read with Section 146 C.P.C. and Order 21 Rule 16, I am of the considered view that Section 146 C.P.C. has been introduced with the object of facilitating the exercise of rights by persons in whom they can be said to be vested by devolution or an assignment, and being a beneficial section, has to be construed liberally so as to advance justice. The expression 'any person claiming under him' is wide enough to cover cases of devolution, assignment of property etc. When the assignee of debts has been held to have succeeded to the interest of decree holder in a decree which is passed subsequent to the assignment of the debts; then the transferee of property can be said to be a person claiming under the transferor all the rights which the transferor had in respect of the transferred property.

23. Since the petitioner, who filed the E.P. purchased the portion-B property from the decree holder Maruthi Bele, who is the plaintiff and decree holder in O.S. No.7 of 1980 and obtained a final decree in I.A. No.90 of 2006 in O.S. No.7 of 1980, dated 15.9.2008 and the petitioner being purchaser from the original decree holder, has every right to file E.P. under Section 146 C.P.C.

24. The trial Court, having considered the proportion of law as settled above and the provisions under Section 146 C.P.C. and Order

21 Rule 16 C.P.C., came to the right conclusions that the revision petitioner, who is judgment debtor No.3, in Ex.R2 vehemently contended that under the guise of final decree except taking symbolic possession of the suit mulgi, they bent upon disturbing and vacating the revision petitioner from the suit mulgi, which means that the revision petitioner has no objection for delivering the symbolic possession in E.P. No.7 of 2015. The revision petitioner/J.Dr. No.3 having knowledge about passing of the final decree in I.A. No.90 of 2006 in O.S. No.8 of 1980, dated 15.9.2008 filed O.S. No.3 of 2009 only for temporary injunction against the vendor of the petitioner and interim injunction therein does not preclude the purchaser from the original decree holder in filing the execution petition to realize the fruits of the decree. Therefore, the execution proceedings can be sustained.

25. The trial Court, having considered all the facts in dispute, allowed the petition partly directing the revision petitioner to deliver the portion-B schedule property to the petitioner/purchaser from the original decree holder in pursuance of the final decree dated 15.9.2008, while rejecting a plea seeking permission to construct a wall dividing the portion 'A' and 'B' schedule property. The impugned order is legal, valid and do not suffer from any legal infirmities warranting interference. The trial Court, in my considered view, has not decided anything which is inconsistent to the provisions under Section 146 C.P.C. and Order 21 Rule 16 C.P.C. Therefore, I am not inclined to interfere with the impugned order of the Court below.

26. In the result, the Civil Revision Petition is dismissed with costs.

27. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

2nd November, 2018

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