

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.1979 of 2018

ORDER:

1) Aggrieved by the order, dated 19.03.2018, passed in E.A.No.148 of 2012 in E.P.No.11 of 1991 in O.S.No.340 of 1983, on the file of the Junior Civil Judge, Mummidivaram, wherein and whereunder an application filed under Section 144 read with Section 151 of C.P.C. seeking restitution of the case property from the decree holders was allowed, the present Civil Revision Petition is filed under Section 115 of C.P.C.

2) The facts which led to filing of the present Civil Revision Petition are as under:

The deceased 1st respondent, who was the sole plaintiff, filed O.S.No.340 of 1983 against the deceased 1st petitioner herein for declaration of title and also for delivery of possession and future profits. Pending suit, the sole plaintiff died and as such respondent Nos.2 to 5 got themselves impleaded as plaintiff Nos.2 to 5 vide order dated 01.07.1986 in I.A.No.18 of 1986. By its judgment and decree dated 07.02.1991 the suit was decreed. Challenging the same, the defendant filed A.S.No.25 of 1991. The said appeal was allowed, which was confirmed by the High Court, as well as by the Apex Court. It appears that pending the proceedings before the appellate authority, the decree holders filed E.P.No.11 of 1991 on 19.03.1991 for delivery of decree

schedule property and obtained an order on 20.03.1991. The warrant was entrusted to Amin by name M.K.Veera Raju, who is said to have executed the same with the help of police aid, vide Court order dated 20.03.1991 in I.A.No.52 of 1991. The decree holders are said to have taken delivery of possession of the property. Since the appeal filed by the defendant was allowed in his favour, he filed E.P.No.90 of 1997 in O.S.No.340 of 1983 for re-delivery of suit schedule property. As the decree holders preferred S.A.No.936 of 1997 before this Court and obtained status-quo order, the trial Court dismissed the said E.P. During pendency of the second appeal, the sole defendant died and the petitioners herein were brought on records as his legal representatives vide order, dated 23.08.2010 in C.M.P.No.1681 of 2008. Later, the second appeal was also dismissed, confirming the judgment and decree in A.S.No.25 of 1991. Hence, the respondents herein filed the present petition seeking restitution of properties from the petitioners herein.

3) A counter came to be filed stating that the respondents herein cannot seek restitution of property as no decree is passed on the said property, which was delivered to the petitioners herein vide delivery receipt dated 21.03.1991.

4) After considering the rival submissions made, the trial Court allowed the application. Challenging the same, the present Civil Revision Petition is filed.

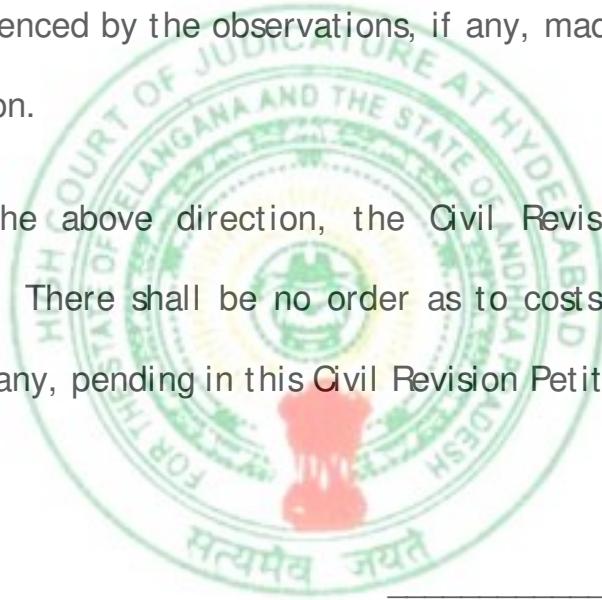
5) Sri P.Sridhar Reddy, learned counsel appearing for the petitioner mainly submits that there is absolutely no adjudication by the trial Court, while deciding the case. According to him, the judgment debtors are claiming property which is not the suit schedule property. He took me through para Nos.10 and 13 of the application filed by the respondents/ defendants to show that the property which they are claiming in their application is not the property which has been delivered to the petitioners herein. Since there is a dispute with regard to property which is sought to be claimed, he submits that it would be appropriate if a detail order is passed by the trial Court declaring the schedule property and extent of land, if it is to be delivered.

6) On the other hand, Sri M.M.M.Srinivasa Rao, learned counsel for the respondents would submit that since the issue requires consideration on certain factual aspects, it would be just and proper, if a report is called for from the trial Court.

7) As seen from the arguments advanced, the schedule appears to have been amended, Survey No.576/ 2 was said to have been altered to 576/ 4 in item No.1 of the schedule property and Sy.No.576/ 3 was altered to 576/ 8 in item No.2 of the schedule property vide order dated 05.12.1990 in I.A.No.947 of 1990. It is urged that what has been claimed by the respondents herein is the property which is not part of the schedule property. These are all disputed facts which were not gone into by the trial Court, while deciding the E.A. Hence I feel that it would not be proper

to call for a report to decide the matter but instead the matter has to be sent back to the trial Court to decide the issue afresh. Hence, the order under challenge is set aside and the matter is remanded back to the trial Court directing the said Court to decide the E.A. afresh with regard to extent and nature of the property to be delivered and also other legal aspects which are sought to be raised in this Civil Revision Petition, within a period of six (06) weeks from the date of receipt of a copy of this order. It is needless to mention that the trial Court shall dispose of the E.A. un-influenced by the observations, if any, made by this Court in this revision.

8) With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

08.06.2018
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