

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.3036 OF 2011

ORDER:

This revision petition is filed under Section 115 C.P.C. challenging the order dated 06.07.2011 in E.A.No.67 of 2009 E.P.No.126 of 1988 in O.S.No.266 of 1986 passed by the Junior Civil Judge, Prathipadu, ordering restitution of schedule property and consequently dismissal of second appeal for default before this Court.

It is an admitted fact that O.S.No.266 of 1986 filed for declaration of title and recovery of possession was decreed, against which A.S.No.37 of 1988 was filed before the Senior Civil Judge, Peddapuram. During pendency of the first appeal, the decree holder initiated execution proceedings for recovery of possession. The decree and judgment dated 08.08.1988 in O.S.No.266 of 1986 passed by the Court below was set aside by the Senior Civil Judge, Peddapuram by judgment dated 22.09.1994 in A.S.No.37 of 1988.

The plaintiffs/decreed holders aggrieved by the judgment in A.S.No.37 of 1988 preferred Second Appeal No.572 of 1994, which ended in dismissal for default by this Court. As on today decree was executed and possession of schedule property through process of the Court was delivered and on reversal of the decree and judgment passed in O.S.No.266 of 1986 by the Court below in A.S.No.37 of 1988,

the decree holder, who recovered possession through process of the Court, has to redeliver possession to the judgment debtors.

The main contention before this Court is that the second appeal, which was dismissed for default was restored in S.A.No.572 of 1994 and it is pending on the file of this Court, but no details were furnished as to the date of restoration or whether any stay is subsisting as on today. Learned counsel expressed his inability to get information from the client. In the absence of any details and expressing his inability to furnish details as to restoration and subsistence of stay, this Court has no option except to dispose of the revision in accordance with law.

Section 144 C.P.C. deals with restitution. Sub-section (1) Section 144 C.P.C. says that where and in so far as a decree or an order is varied or reversed in an appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the

refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order. Thus, it is the duty of the Court, which passed the decree on application when the decree passed by the Court below was reversed restore the possession from whom property was delivered as he was dispossessed in execution of the decree.

It is an undisputed fact that O.S.No.266 of 1986 was decreed for declaration and recovery of possession declaring the title of the plaintiff and recovered possession during pendency of A.S.No.37 of 1988 by the decree holder filing execution petition and obtained delivery of possession through process of the Court. But the said decree was reversed in judgment dated 22.09.1994 by the Senior Civil Judge in A.S.No.37 of 1988 and S.A.No.572 of 1994 was dismissed for non prosecution.

Learned counsel for the petitioner did not bring to the notice of this Court about the subsistence of stay of execution of all further proceedings and therefore, when the decree is reversed and obtained possession in execution of the original decree of the trial Court, the person who obtained possession is bound to restore the possession to the defendant in the main suit.

As such, the impugned order passed by the Court below is free from any illegality, warranting no interference of this Court exercising power under Section 115 C.P.C. as the jurisdiction of this Court under Section 115 C.P.C. is limited and such jurisdiction can be exercised by this Court only when the Court below passed any order appears to have exercised jurisdiction not vesting on it by law or failed to exercise jurisdiction vested or to have acted on its jurisdiction illegally or with material irregularity. In the absence of any such illegality or irregularity in exercise of jurisdiction by the Court below or failure to exercise the jurisdiction that vested on it or exercise by excessive jurisdiction that conferred on it. In the absence of establishing any of these three grounds, this Court cannot interfere with the order passed by the Court below in execution petition. Therefore, I find no merit in the revision petition and it is devoid of merits and the same is liable to be dismissed.

In the result, the civil revision petition is dismissed. However, the petitioners may take appropriate steps in the event of their success in the second appeal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY,J

07.03.2018
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