

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No.3108 of 2018

ORDER:

Aggrieved by the dismissal of an application for execution of a decree of eviction, based upon the boundaries mentioned in the schedule to the Execution Petition, the decree holder has come up with the above revision petition.

2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner and Mr. K.V. Bhanu Prasad, learned counsel for the respondent.

3. The petitioner admittedly secured an order of eviction against the respondent, who is his tenant. The order of eviction attained finality. But unfortunately the schedule of property in the decree showed the Flat to be in the second floor. Therefore, when an Execution Petition was filed, the Amin, who went to execute the warrant, returned it on the ground that the respondent is in the third floor and not in the second floor. Hence, the petitioner filed an application in E.A.No.246 of 2017 for executing the warrant as per the boundaries mentioned in the petition. But the same was dismissed by the Executing Court forcing the decree holder to come up with the above revision.

4. It is true that the Executing Court cannot go beyond the decree. But the door number of the property, the boundaries, the extent of the property etc., fully tallied. The only mistake committed in the schedule to the decree was that the property was mentioned to be in the second floor. However, the respondent is a tenant in the same property in respect of the third floor.

5. It is not the case of the respondent that he is a tenant in respect of two floors. He is admittedly a tenant in respect of only one flat. The

order of eviction was also not an *ex parte* order, but an order passed after contest. If the schedule of property shown in the eviction petition was not in the occupation of the respondent, the respondent need not have contested. If the respondent is in occupation of only one flat and if the order of eviction is passed after contest, the respondent cannot take advantage of the mistake. This is not a case where the identity of the property is in doubt.

6. Therefore, the civil revision petition is allowed, the impugned order is set aside and I.A.No.246 of 2017 filed by the decree holder stands allowed. The Executing Court, without any further delay, in view of the past history, ensure that the decree is executed and the possession be handed over, and file a report of compliance before this Court within a period of four weeks from the date of receipt of a copy of this order. There will be no order as to costs.

7. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

31st August, 2018
Js.

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