

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN**

**CIVIL REVISION PETITION NO.5648 OF 2018**

**ORDER:**

Aggrieved by the order dated 14.09.2018, in E.A.SR.No.1966 of 2018, in E.P.No.8 of 2016, in O.S.No.104 of 2003, passed by the XXIV Additional Chief Judge, FAC XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad, the petitioners have filed the present revision petition. By the impugned order, the learned Judge has dismissed the application filed by the petitioners under Section 47 of the Code of Civil Procedure (C.P.C).

Learned counsel for the petitioners, Mr Khaja Aijazuddin, has vehemently submitted firstly that the petitioners have a right to file an application under Section 47 C.P.C. for raising certain objections to the decree, that was passed by the learned trial Court while decreeing the suit for specific performance in favour of the respondent/decree holder. Secondly, the decree is related to an extent of land admeasuring 516 sq. yards. However, according to the petitioners/judgment debtors, the extent of land was 445 sq. yards. Thus, there was a mis-match with regard to the extent of the property in question. Despite the fact that the petitioners had filed application under Section 47 C.P.C., without understanding the scope of Section 47 C.P.C., the learned Judge has dismissed the application. Hence, the order dated 14.09.2018 should be interfered with.

On the other hand, Ms A. Satyasri, the learned counsel for the respondent, has pleaded that even on an earlier occasion, the petitioners had raised objections before the learned executing Court with regard to the extent of land involved in the case. But

by order dated 03.12.2016, the learned Executing Court had clearly opined that the decree holder would be entitled to the relief, if a sale deed was executed only with relation to 445 sq. yards, and not 516 sq. yards. The said order was passed by the Executing Court only on an objection raised by the Judgment Debtor. Therefore, the said issue with regard to the extent of land, for which the registered sale deed is to be entered into, has already been settled by the order dated 03.12.2016. Therefore, the petitioners were not justified in filing an application under Section 47 C.P.C. According to learned counsel, filing of such an application is not only an abuse of process of the Court, but is also an abuse of the law. Considering the repeated efforts of the petitioners to raise the issue before the Executing Court, the Executing Court has deprecated the conduct of the petitioners. Therefore, the learned counsel has supported the impugned order dated 14.09.2018.

Heard, learned counsel for the parties and perused the impugned order, as well as the order dated 03.12.2016, produced by the petitioners before this Court.

Admittedly, the decree was passed in relation to 516 sq. yards of land. Further, on verification, the petitioners had raised objection that a decree could not be executed vis-à-vis 516 sq. yards of land, as the size of the property in dispute was only 445 sq. yards. After hearing both parties, by order dated 03.12.2016, learned Executing Court had limited the decree to only 445 sq. yards of land. It had clearly opined that *“so the decree holder is entitled to 445 sq. yards, the Judgment Debtor is directed to execute the sale deed for 445 sq. yards. Mere technical point the JDr cannot*

*escape their liability as the High Court also confirmed the decree. The Decree Holder is entitled to 445 sq. yards but not 516 sq. yards. Even though the consideration is deposited for 516 sq. yards.”*

In the application filed by the petitioners under Section 47 C.P.C., the same objection has been taken. However, as the objection has already been dealt with by order dated 03.12.2016, between the same parties before the same Court, obviously the application filed under Section 47 is hit by doctrine of issue *estoppel*. Once the executing Court had clearly directed the judgment debtors to execute the sale deed vis-à-vis 445 sq. yards, the petitioners/Judgment Debtors are not justified in again raising the same issue with regard to the extent of land, for which the sale deed is to be executed.

Therefore, the learned executing Court was justified in passing the impugned order dated 14.09.2018.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. The petition is devoid of merits; it is, hereby, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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**(RAGHVENDRA SINGH CHAUHAN, J)**

03.12.2018  
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