

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.6038 of 2017

ORDER:

The Civil Revision Petition is filed against the order dated 06.06.2017 passed in E.A. No.24 of 2017 in E.A. No.13 of 2017 in E.P. No.2 of 2107 by the XX Junior Civil Judge, City Civil Court, Hyderabad.

2) The three revision petitioners herein are the claim petitioners in E.A. No.13 of 2017 making a claim against the execution in E.P. No.2 of 2017 of the decree in O.S. No.2924 of 2015 obtained by the revision 1st respondent/D.Hr against the revision 2nd respondent—J.Dr.

3) The suit was filed for eviction and recovery of possession in respect of plaint schedule property bearing municipal Nos.5-3-334, 335, 336 (three mulgies/ shops) admeasuring 100 Sq.yds situated at Tope Khana, Gosha Mahal, Hyderabad of North: Lane, South: Neighbours property H.No.5-3-333, East:Tope Khana Mosque bearing H.No.5-3-337, West:Sub Road. The averments in the suit filed by the sole plaintiff against the sole defendant (revision 1st respondent against 2nd respondent herein) were that plaintiff /D.Hr is the absolute owner of the property and defendant, who is brother in law of the plaintiff, was inducted as a tenant by plaintiff with a monthly rent of Rs.4,500/- per month excluding electricity consumption charges and

property taxes for commercial purpose of running bangle stores. In the month of October, 2014 the monthly rent has been enhanced from Rs.4,500/- per month to Rs.8,000/- per month and defendant failed to pay and committed default. The defendant filed O.S. No.1849 of 2014 before the XX Junior Civil Judge, City Civil Court, Hyderabad against this plaintiff for injunction with a malafide intention by setting up a false claim over the leasedout suit schedule property through his hench men namely Mohd. Nazeer, Abdul Satar, Abdul Sattar and Pavan Kumar. The defendant also filed I.A. Nos.481 and 482 of 2014 seeking to implead the third parties and those were dismissed on 16.04.2015. However, the suit was decreed on 06.05.2015 directing the plaintiff not to evict the defendant without following due process of law, thereby the plaintiff filed O.S. No.2924 of 2015 stating that the defendant failed to vacate the premises despite legal notice dated 04.07.2015 issued by the plaintiff and that was returned unclaimed. After the suit was decreed, the plaintiff/ D.Hr filed E.P. No.2 of 2017 in O.S. No.2924 of 2015 pursuant to the decree dated 18.11.2016 against the sole J.Dr under Order XXI Rule 35 C.P.C for recovery of possession as J.Dr failed to vacate the premises within one month therefrom. It is while so, the third parties to the suit maintained the claim petition in E.A. No.13 of 2017 saying that they are tenants of the property bearing No.5-3-337, consisting of three shops/mulgies admeasuring 100 Sq.yds,

situated at Toop Khana, Gosha Mahal, Hyderabad, which is a registered notified wakf property under the Gazette Notification No.30/A (part-II) dated 16.08.1984 at Sl.No.1666 attached to the Masjid, Toop Khana, Hyderabad and the 1st respondent—D.Hr in O.S No.2924 of 2015 played fraud on the Court under the guise of collusive *ex parte* judgment against his principal under law and in filing E.P. No.2 of 2017 for delivery of possession of the property despite there is no landlord and tenant relationship between them. In fact, the petitioners herein and one Sri Pavan Kumar filed O.S. No.50 of 2015 before the A.P. State Wakf Tribunal, Hyderabad against the respondents herein, the Managing Committee, Masjid-e-Toop Khana and the A.P.State Wakf Board, rep. by its Chief Executive Engineer. On 14.03.2017 and 15.03.2017 the bailiff of the Court, to execute the decree in O.S. No.2924 of 2015 in E.P. No.2 of 2017 pursuant to the delivery warrant with police aid, came to the property. Since there is a serious dispute in relation to the property and its identity, the claim petitioners filed E.A. No.24 of 2007 for appointment of Advocate Commissioner, on these facts, saying that it is just and necessary to note down the physical features of the property covered by the decree as well as petition schedule property, and to note down the real and true facts, as the bailiff report of alleged delivery is untrue and incomplete and the advocate Commissioner may be appointed and directed to take keys from Nazarath Section, which the bailiff handed

over, to open the mulgies and verify whether the stock in trade and business material is lying in the shop or not and also to note down the physical features of the property and its present condition whether the bailiff actually delivered the possession by removing the belongings of the petitioners or any articles are still lying in the shops.

4) The D.Hr as 1st respondent to the claim petition opposed the petition as it is devoid of merits and it is a fictitious claim though the property covered by the decree schedule in E.P. No.2 of 2017 belongs to 1st respondent— D.Hr in O.S. No.2924 of 2015. It is also his contention that as per Wakf records, 1) Khair Mohammed Khan, 2) Saleem Ahmed Khan, 3) Rizwan Mohd Khan, 4) Shaik Mahboob, 5) T. Satyanarayana, 6) Abdul Subhan, 7) Maqsood Ahmed, 8) Irfan Mohammed, and 9) Ganga Bai Ram, are the tenants of Door Nos.5-3-324, 325, 326, 337, 470, 471, 472, 325/1 and 451. The Task Force Officer, (Vigilance and Enforcement) A.P. State Wakf Board, Hyderabad, conducted enquiry vide file No.9/TF/MTK-GM-Wakf/2013, dated 09.12.2013 and specifically mentioned the above named tenants in the property belongs to the wakf property and the claim petitioners as if tenants of H.No.5-3-337 would be false and J.Dr being a tenant for the property bearing H.No.5-3-334, 335 and 336 filed a suit in O.S. No.1849 of 2014 for perpetual injunction and obtained decree not to dispossess except through due process of law and the petitioners are falsely

claiming as if they are tenants for property bearing No.5-3-337. They filed I.A. Nos.480 and 481 of 2014 in O.S. No.1849 of 2014 claiming as tenants of H.No.5-3-337, and the same was disposed of on 16.04.2015 and the petitioners claimed in respect of the premises bearing No.5-3-337 is different to house Nos.5-3-334, 335 and 336. The unsuccessful petitioner filed O.S. No.50 of 2015 before the A.P. State Wakf Tribunal against the respondent Nos.1 and 2 and the President of Managing Committee and A.P. State Wakf Board only with an intention to multiply the litigation and pursuant to the decree in O.S. No.2429 of 2015 in E.P. No.2 of 2017, the bailiff under the execution of decree for delivery of the property, came with police and delivery was effected and the claim is devoid of merits and there are no grounds to appoint an advocate commissioner.

5) The lower Court pursuant to which passed the impugned dismissal order on 06.06.2017 with an observation that as per the petitioners E.P. Schedule property belongs to Wakf bearing H.No.5-3-337 and as per the D.Hr it is the private property and door numbers are entirely different and whether the bailiff executed the warrant without removing the stock does not decide whether the property belongs to Wakf Board or not. The Wakf board also filed a claim petition with documentary evidence as needed to know whether the three mulgies is property of D.Hr or property of Wakf board and noting down the physical features, thereby no way helpful of

three mulgies in question and dismissed the petition saying it is nothing but drag on proceedings.

6) Impugning the same, the present revision is filed with the contentions in the grounds of revision vis-à-vis oral submissions of the revision petitioners that the impugned order of the lower Court dismissing the petition for appointment of advocate commissioner, to note down the physical features of the subject property is contrary to law, weight of evidence and unsustainable and trial Court should have seen that there is boundary dispute bonafide which requires local inspection by advocate commissioner to identify with reference to the boundaries as part of the enquiry in relation to the claims of such report will be helpful to note down the physical features and sought for allowing the revision.

7) Whereas it is the submission of the learned counsel for the respondent No.1/D.Hr in opposing the claim petition that the impugned order of the lower Court holds good and for this Court while sitting in revision, there is nothing to interfere.

8) Learned counsel for the 1st respondent—D.Hr has filed the Counter opposing the revision petition and supporting the order of the lower Court impugned the revision saying that petition was filed for appointment of advocate commissioner in the lower Court in E.A. No.24 of 2017, is

rightly dismissed as devoid of merits and not sustainable and thereby, the revision is liable to be dismissed and the claim is with no basis much less as the property in question admeasuring 100 Sq.yds which belongs to the D.Hr who rightly executed and obtained possession of the property bearing H.No.5-3-334 to 336 admeasuring 100 Sq.yds and the same is not part of H.No5-3-337, thereby, the claim of the claim petitioners is unsustainable and earlier they made a claim in O.S. No.5849 of 2014 by filing IA Nos.480 and 481 of 2014 that were ended in dismissal by common order dated 16.04.2015. It is also the contention that the Court delivery with reference to Amin report with police aid no way can be impugned much less in the claim petition by seeking appointment of advocate commissioner to ascertain the facts and sought for dismissal.

9) Heard both sides and perused the material on record.

10) So far as the present revision is concerned the appointment of advocate commissioner to note down the physical features in relation to the identification of the door Nos.5-3-337 with reference to 5-3-324 to 326, 334, 335, 336 etc., and to note down the physical features including in relation to the decree schedule property covered by delivery warrant and the claim petition schedule property with reference to the same and with reference to the municipal,

revenue and wakf record, if any, and private records in fact shorten the litigation, noting down the physical features and reporting of the matter by the Commissioner serves some purpose which is unique and also lesson the oral evidence and to elucidate the matter in dispute within the scope of Order XXVI Rule 9 CPC and Section 75 CPC by such local investigation. Thereby the dismissal order of the lower Court is unsustainable.

11) Accordingly, the revision is allowed directing the lower Court to appoint an advocate commissioner by fixing fee for the purpose of noting down the physical features by giving advance notice to the parties for visiting suit schedule property and submit a report by drawing a plan in relation thereof and to answer the work memos with reference to respective documents within the scope, if any. No order as to costs.

12) Consequently, Miscellaneous petitions, if any pending in this revision, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:25.01.2018
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Date: 01.2018

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