

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.7372 of 2017

ORDER:

Heard Sri M.R.S.Srinivas, learned counsel for the petitioners and Sri A.Venkatesh, learned counsel for the first respondent apart from perusing the material available before this Court.

2. Petitioners are the judgment-debtors in E.P.No.663 of 2005 in O.S.No.516 of 1996, on the file of the Court of the Principal Junior Civil Judge, Kurnool.

3. First respondent herein instituted the said suit for a decree of mandatory injunction for removal of the constructions made by the judgment-debtors. The said suit was dismissed by the trial court on 15.09.1999. Thereafter, the plaintiff/first respondent herein preferred A.S.No.138 of 1999 before the Court of the III Additional District Judge, Kurnool on 08.07.2002. The said appeal suit was allowed, decreeing O.S.NO.516 of 1999, by granting temporary injunction for removal of the encroachments. Thereafter, on 22.08.2005, first respondent herein filed E.P.No.663 of 2005, seeking enforcement of the decree by showing the 40 feet road as schedule to the said application. On 31.01.2012, E.P.No.663 of 2005 was allowed by the executing Court. Assailing the said order, petitioners herein filed CRP.No.1240 of 2012 before this Court by principally contending that the executing Court should not have ordered that E.P. without notice to the Judgment debtors as provided under Order 21 Rule 22 of the Code of Civil Procedure.

4. The said CRP.1240 of 2012 was allowed by this Court on 13.09.2012, setting aside the order passed by the Court below while permitting the petitioners herein to place on record the objections within two weeks from the said date. Thereafter, on 09.10.2012, objections were filed before the executing Court by the petitioners herein. The learned Principal Junior Civil Judge, by way of an order dated 20.11.2017, allowed E.P.No.663 of 2005 directing issuance of delivery warrant.

5. This revision, filed under Article 115 of the Code of Civil Procedure, challenges the validity and the legal sustainability of the said order passed by the executing Court on 20.11.2017.

6. According to the learned counsel for the petitioners, the impugned order is highly erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 21 of the Code of Civil Procedure. It is further submitted by the learned counsel that the Court below did not take into consideration the subsequent events including the regularisation of encroachments by the second respondent vide resolution dated 29.09.2010 and the letter dated 08.10.2010, expressing no objection for grant of pattas. It is further contended that the executing Court also did not take into consideration the possession certificates issued in favour of the petitioners herein.

7. Resisting the said submissions, Sri A.Venkatesh, learned counsel for the first respondent submits that there is absolutely no error nor there exists any infirmity in the impugned order and in the absence of the same the impugned order is not amenable for any correction by this Court under Section 115 of the Code of Civil Procedure. It is further contended by the learned counsel that even after remand by this Court in CRP.No.1240 of 2012 on 13.09.2012, the petitioners herein did not file any documents in support of their claims and the documents now filed before this Court also would not render any assistance to the petitioners herein and the said documents clearly show that the Municipal Corporation did not pass resolution with regard to 40 Feet road nor recommended the grant of pattas in favour of the petitioners herein in respect of the schedule properties.

8. The copy of the objections said to have been filed before the Court below pursuant to the orders of this Court in CRP.No.1240 of 2012 on 13.09.2012 is placed on record along with the CRP as material paper. There is absolutely no material to show that the documents now sought to be relied upon by the petitioners were enclosed along with the said objections. The said objections also do not refer to resolution dated 29.09.2010 and the letter dated 08.10.2010. The resolution dated 29.09.2010 clearly shows that the Town Planning Wing of the Municipal Corporation recommended for regularisation of the encroachments of the land other than the land covered by 40 feet Road. In the letter of the Commissioner, Municipal Corporation

dated 08.02.2010, addressed to the District Collector, Kurnool, the Corporation also expressed its no-objection for issuing pattas to the encroachers by leaving 40 feet Road as per the directions issued in E.P.No.663 of 2005. The schedule shown in the execution petition is also 40 feet lay out road indicated in the approved lay out. Therefore, this Court does not find any valid reason to meddle with the well articulated order passed by the Court below which is impugned in the present Civil Revision Petition. It is also relevant to state that the documents now sought to be pressed into service by the petitioners herein were not filed before the Court below. Therefore, the Court below cannot be faulted.

9. Accordingly, in view of the above reasons, the revision is dismissed. It is needless to observe that the execution be restricted to the schedule property only. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date:06.04.2018  
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A.V.SESHA SAI, J

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