

The Hon'ble Sri Justice V.RAMASUBRAMANIAN

CIVIL REVISION PETITION No.7468 OF 2017

Date:25.01.2018

Between:

Shaik Shameem Banu W/ o.Khadar Bhasha,
Aged about 53 years, Occ: Properties,
R/ o.D.No.12-7-17, Hayath Khan Street,
Tarapet, Vijayawada, Krishna District.

...Petitioner

Vs.

Md.Abdul Nayeem, S/ o.Mohammad Usman,
Muslim, aged about 41 years, R/ o.D.No.8-15-9C,
Yenugulavari Street, Wynchipet, Vijayawada,
Krishna District.

... Respondent

Counsel for Petitioner : M s.S. Madhava Rao

Counsel for Respondent : Sri V.S.R. Anjaneyulu

Gist :

Head Note :

Cases Referred : Nil



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No.7468 OF 2017ORDER:

Aggrieved by the dismissal of her claim petition under Section 47 CPC, the Judgment Debtor has come up with the above revision.

2. Heard Mr. S. Madhavarao, learned counsel for the petitioner. Mr. V.S.R. Anjaneyulu, learned counsel takes notice for the respondent.

3. One Mr. Shaik Yasin filed a suit in O.S No.58 of 2012 against the petitioner herein for specific performance of an agreement of sale. The suit was decreed on 20.12.2012, *ex parate*. It is not known whether the petitioner took steps to have the *ex parte* decree set aside or not? However, the decree has attained finality as on date.

4. The decree holder laid an execution petition in EP No.34 of 2013 and got a sale deed executed through the Court in favour of the respondent herein, mentioning the respondent as his nominee. Thereafter, the respondent filed EP No.99 of 2014 for possession. In that execution petition, the petitioner filed an application in EA No.191 of 2014 under Section 47 CPC. This application was dismissed by the executing Court forcing the judgment debtor to come up with the above revision petition.

5. The contention of the petitioner is that the decree is not executable in view of the following facts:-

i. That a suit in O.S No.492 of 2014 is pending on the file of the XIV Additional District Court questioning the validity of the sale deed executed pursuant to the decree in O.S No.58 of 2012.

ii. That the respondent was not the decree holder and hence, was not entitled to seek delivery of possession.

iii. That the sale deed obtained by the respondent is in violation of Section 28(3) of the Specific Relief Act, 1963.

iv. That the respondent was not entitled to take delivery without prior notice under Order 21 Rule 22 CPC.

v. That there was no prayer in the plaint for the execution of the sale deed in favour of the nominee of the plaintiff; and

vi. that the execution petition under Order 21 Rule 35 CPC is not maintainable as there was no decree for delivery of possession.

6. All these grounds were rejected by the executing Court, after an elaborate consideration of the series of decisions relied upon by both sides. I have also independently considered the grounds on which the decree is claimed to be unexecutable, but I am unable to agree with the claim.

7. The pendency of a civil suit in O.S No.492 of 2014 questioning the execution of the sale deed in EP No.34 of 2013 in O.S No.58 of 2012, cannot be a bar for proceeding with the EP No.99 of 2014. If at all it may be a bar for the petitioner to file a petition under Section 47 CPC, as the petitioner cannot ride two horses, one in the form of O.S.No.492 of 2014 seeking to set aside the sale deed executed in the execution proceedings and another in the form of a claim petition under Section 47 CPC. As per law, all objections can be taken in an application under Section 47 CPC itself. But, the petitioner has chosen to take recourse to a civil suit in O.S.No.492 of 2014 and hence, it is not open to the petitioner to rely upon that suit to have the application under section 47 CPC allowed.

8. The contention that the respondent was not the decree holder and that there was no prayer in the suit for execution of the sale deed in favour of the nominee, and that therefore, the Court could not have executed a sale deed overlooking section 28(3) of the Specific Relief Act, 1963, also does not merit acceptance. The suit for specific performance has to be understood as a suit where an agreement vendor is called upon by the agreement purchaser to perform the obligations arising out of the agreement of sale. Therefore, it is always open to the decree holder to take sale deed in favour of his nominee. The bar under Section 28(3) of

the Specific Relief Act, may apply at the stage of suit, but not after a decree is granted for specific performance of the obligations.

9. The case of the petitioner is that a general power of attorney was executed by her in favour of her daughter and that her daughter had played fraud upon her by entering into an agreement of sale and that the general power of attorney was also cancelled later. If it is so, the remedy of the petitioner is only to seek damages against the agent, who allegedly played fraud. During the substance of a valid power of attorney, the actions done by the agent are binding upon the Principal and the third parties cannot get affected by a *post-o-facto* discovery of the fraud.

10. In fact, the only claim of the petitioner is that she is the owner of 1/4th undivided share of the building comprised in the suit schedule property. But, it was in respect of this undivided share that she executed a GPA. The GPA was registered in favour of the petitioner's daughter and admittedly she entered into the agreement of sale with the plaintiff.

11. Therefore, I am of the considered view that the dismissal of the petition under Section 47 CPC was perfectly in order and I find no reason to interfere with the order of the Court below. Therefore, the revision petition is dismissed.

12. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

January 25, 2018
KTL