

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1624 of 2019

ORDER :

This Civil Revision Petition is filed challenging the order dt.10-07-2019 in E.A. (SR) No.58 of 2019 in E.P.No.34 of 2017 in O.S.No.5 of 2003 of the IX Additional Senior Civil Judge, L.B. Nagar, Ranga Reddy District.

2. Petitioner is J.Dr.-1/1st defendant in the suit.
3. The said suit was filed by 1st respondent herein against petitioner and others for recovery of possession of the suit schedule property, arrears of rent and mesne profits.
4. The property in respect of which possession was sought was described in the prayer in the suit as premises bearing No.12-80 (part of ground floor) situated at Adarshnagar Colony, Qutubullahpur village and Municipality, Qutubullahpur Mandal, R.R. District.
5. The petitioner herein filed another suit O.S.No.638 of 2003 against 1st respondent and others to declare that oral partition between himself and defendants in 1991 for 'A' schedule property is valid and binding upon parties; that he thus became the owner of the suit schedule property i.e. 'B' schedule property; and that a gift deed being registered Doc.No.5295/2002 dt.06-07-2002 executed by 2nd defendant in favour of 1st respondent herein is null and void and

not binding on him. He also sought for perpetual injunction restraining the defendants in the suit from interfering with his alleged possession and enjoyment of 'B' schedule property.

6. The 'B' schedule property mentioned in O.S.No.638 of 2003 is part of House No.12-80 admeasuring 86 sq. yds of 840 sft of constructed area on ground floor and first floor situated at Adarshnagar Colony Housing Building Society, Balangar, Hyderabad within the specified boundaries.

7. Both these suits were tried together by the Court of the IV Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District and O.S.No.5 of 2003 was decreed directing the petitioner to vacate 'B' schedule property in O.S.No.638 of 2003 (scheduled property in O.S.No.5 of 2003) and deliver vacant possession of the schedule property to the 1st respondent on or before 18-03-2010. The relief regarding arrears of rent and future rents was also granted.

8. Petitioner herein preferred appeal A.S.No.132 of 2010 before the Principal District Judge, Ranga Reddy District at L.B. Nagar and the same was dismissed on 01-10-2015.

9. He then filed Review Petition No.377 of 2016 to review the order in the appeal and the said Review Petition was dismissed on 07-06-2017.

10. E.P.No.34 of 2017 was filed by 1st respondent for execution of the decree in O.S.No.5 of 2003 mentioning that E.P. schedule

property was part of house bearing No.12-80 admeasuring 86 sq. yds of 840 sft of constructed area on ground floor and first floor situated at Adarshnagar Colony House Building Society, Balanagar, Hyderabad.

11. Petitioner initially filed E.A.No.118 of 2017 stating that the decree in O.S.No.5 of 2003 is nullity and Civil Court had no jurisdiction to execute the same in view of Section 10(1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act').

12. That application was rejected on 31-08-2017 and also confirmed in C.R.P.No.5170 of 2017 on 15-03-2019.

13. Thereafter E.A. (SR) No.58 of 2019 was filed by the petitioner under Section 47 C.P.C. to declare that the decree in O.S.No.5 of 2003 is a nullity and it had no jurisdiction to execute the decree in O.S.No.638 of 2003; there is no area, description of the schedule property in O.S.No.5 of 2003; that it would amount to execution of decree which is beyond the competence of the Court; and also that the decree is barred under Section 10(1) of the Act.

14. The decree-holder opposed the same stating that all the averments raised in this application had been subject matter of C.R.P.No.5170 of 2017 decided on 15-03-2019. He contended that petitioner had the opportunity to take all pleas in E.A.No.118 of 2017 including the pleas raised now and he cannot therefore again file

present application under Section 47 C.P.C. and it is therefore not maintainable.

15. By order dt.10-07-2019, the Court below dismissed the said application. It held that the judgment in O.S.No.5 of 2003 had been confirmed in A.S.No.132 of 2010 and the Review Petition to review the said judgment in the appeal was also dismissed on 07-06-2017. It observed that decrees in O.S.No.5 of 2003 and O.S.No.638 of 2003 are showing the schedule properties separately and the schedule property in the decree in O.S.No.5 of 2003 is 'B' schedule in O.S.No.638 of 2003. It held that the contention that the Civil Court has no jurisdiction in view of Section 10(1) of the Act was already urged and rejected in the order dt.15-03-2019 in C.R.P.No.5170 of 2017. As regards the description of schedule property, it held that the judgment in O.S.No.5 of 2003 contains the schedule property to it and there is no merit in the contention of the petitioner that the decree is wrongly drawn. It also observed that the prayers sought for in the E.A. could have been raised by the petitioner in the earlier E.A.No.118 of 2017, but he did not do so, and when the said E.A. was dismissed on 31-08-2017 and confirmed in C.R.P.No.5170 of 2017, petitioner has filed this application and it is nothing but an abuse of process of Court.

16. Assailing the same, this Revision is filed.

17. Learned counsel for petitioner contended that the property which is subject matter of O.S.No.5 of 2003 filed by 1st respondent is only House bearing No.12-80 (part of ground floor) situated at Adarshnagar Colony Housing Building Society, Balangar, Hyderabad; it is different from the property which is 'B' schedule property in O.S.No.638 of 2003 which consists of ground and first floor of same house bearing No.12-80 at Adarshnagar Colony House Building Society, Balangar, Hyderabad; and under the guise of execution of decree in O.S.No.5 of 2003, the 1st respondent is in fact taking possession of the property which is subject matter of O.S.No.638 of 2003 and this is impermissible in law.

18. He placed reliance on Section 2(2) C.P.C. which defines the term 'decree' and also Section 47 of C.P.C., in support of his plea that the executing Court ought to have gone into this issue about the identity of the property which is subject matter of Execution Petition and its failure to do so causes grave prejudice to him.

19. I have noted the submissions of the learned counsel for petitioner.

20. The decree dt.18-01-2010 in O.S.No.5 of 2003 in favour of the 1st respondent is a decree of delivery of possession and the schedule of property in the said decree is indicated as part of house No.12-80 admeasuring 86 sq. yds of 840 sft of constructed area on ground floor

and first floor situated at Adarshnagar Colony House Building Society, Balanagar, Hyderabad.

21. Assuming that there is an error in drafting of decree by mentioning property wrongly in the decree schedule, nothing prevented the petitioner from getting the decree corrected under Section 152 or 153 C.P.C. Admittedly, petitioner even filed an appeal A.S.No.132 of 2010 before the Principal District Judge, Ranga Reddy District against the judgment in O.S.No.5 of 2003. There also petitioner did not canvass this point and the appeal was dismissed on 01-10-2015 and Review Petition against the said order was also dismissed on 07-06-2017. The petitioner could have also raised this point in E.A.No.118 of 2017 filed by him under Section 47 C.P.C. about discrepancy regarding the schedule of properties in E.P.No.34 of 2017. The petitioner did not raise such contention. The said E.A.No.118 of 2017 was dismissed on 31-08-2017 and was confirmed by this Court in its order dt.15-03-2019 in C.R.P.No.5170 of 2017.

22. Without raising the issue about alleged discrepancy of the property which is mentioned in the schedule to the decree passed in O.S.No.5 of 2003 on 28-01-2010, in A.S.No.132 of 2010, in E.A.No.118 of 2017 and in C.R.P.No.5170 of 2017, the petitioner cannot be permitted to raise the same by way of separate E.A. (SR) No.58 of 2018.

23. Admittedly, the executing Court cannot go behind the decree and the executing court has no choice but to execute the decree in respect of the property shown in the schedule to the decree.

24. Coming to the plea of petitioner based on Section 47 C.P.C., if the matter is already decided in the suit and in the decree passed by the Court, the Executing Court under Section 47 C.P.C. cannot go again into the said question. Any error in the decree or judgment can only be corrected either by the trial Court which decreed the suit through Review in the said Court or under Section 152 or Section 153 C.P.C. Without taking recourse to any of these steps, the petitioner cannot invoke Section 47 C.P.C. for a second time and seek to stall the execution of the decree.

25. Therefore I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 115 C.P.C.

26. Accordingly, the Civil Revision Petition fails and it is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-07-2019

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