

HON'BLE SMT. JUSTICE P. SREE SUDHA
CIVIL REVISION PETITION No.3685 of 2012

ORDER:

This Civil Revision Petition is filed against the orders of the Court of I Additional Senior Civil Judge, Ranga Reddy District in E.P.No.103 of 2007 in O.S.No.333 of 1986 dated 19.04.2012. The Execution Petition is filed by the Decree Holder to declare the D.Hrs/Plaintiffs as owners and pattedars of the suit land bearing Sy.No.Dakhla No.449 admeasuring Ac.16-19 guntas excluding 200 sq.yards and also to put in possession of the suit schedule land situated at Raviryal Village Maheshwaram Mandal, Ranga Reddy District.

2. The trial Court after considering the counters of both sides and also arguments, allowed the execution petition and directed all the JDRs to hand over the possession of the suit land within 2 months from the date of the order. Aggrieved by the said order, they preferred this revision and they mainly contended that this EP itself is not maintainable as the decree passed is in-executable. The judgment and decree in OS.No.333 of 1986 dated 15.11.1996 does not speak about the boundaries of the alleged extent as claimed by the decree holder as such, the question of executing warrant by the Advocate Commissioner does not arise. But, the trial Court without considering the counter filed

by the JDR No.3 allowed the EP and directed to handover the possession. The JDR No.3 is Government of Andhra Pradesh had acquired the land to an extent of 4190.33 guntas in Sy.No.1 of Imrat Kancha under Memo No.425 dated 28.02.1956 and it was published in the Gazette dated 15.03.1956. The petitioners obtained land admeasuring 4077 acres on short term lease from the Government of Andhra Pradesh in 1967 under authority of Ministry of Defense vide letter No.Adm(rd-28)/98744/66/388/C/D(R&D), dated 02.04.1969 for a period of 3 years initially and later the term was extended for another 2 years up to 1972 vide Corrigendum issued on 13.07.1970 and 16.11.1971. In August, 1972 it was decided that out of 4077 acres of land initially taken over on lease, only 2094 acres should be retained and balance area to be reverted to the Government of Andhra Pradesh. The land admeasuring 2094 acres have been retained on sanction of the President of India at Imarat Kancha vide lease deed dated 18.10.1972 from Judgment Debtor No.3 for a period of 50 years from then the petitioners are in possession of the said land, but the decree obtained by the decree holder in respect of the land situated in Dakala No.449, Chennikunta at Ravirayala Village which is different from the petitioners land as such, the order of the trial Court in appointing Advocate Commissioner to survey the land and fix the boundaries with

the help of Mandal Surveyor does not arise when the schedule mentioned in the decree does not found part of the land in an extent of 2094 acres. The land mentioned in the decree and the land in possession of the petitioners does not co-relate as the entire survey number is different and the decree obtained by the decree holders cannot be executed as it does not indicate about the boundaries of the schedule land. The decree holders filed the E.P 11 years after passing of the judgment in the suit and it clearly shows that they are not aware about their identity of their alleged property and its boundaries. The decree passed in suit is for an extent of Ac.16.19 gts bearing Dakala No.449 situated at Chennikunta, Raviryala Village and the suit schedule property belongs to the petitioners is situated in Imrathkancha which is quite distance from Raviryala Village as such, the executing Court cannot ask the Advocate Commissioner to measure and fix the boundaries of the property which does not contain the decree. They filed work memo before the Advocate Commissioner objecting execution of the warrant stating that the land in survey as per the decree is different from the land which is in possession of the petitioners, but the Advocate Commissioner instead of returning the warrant submitted its report and the trial Court failed to consider the objections raised by them in para No.14 of the Advocate Commissioner Report as follows:-

“From the sketch Map the Mandal Surveyor, Maheshwaram Mandal has pointed out that Charikunta, which according to him is popularly known as Chennikunta: and where as in the Handing Taking over plan, Chennikunta has been shown away from the land measuring 2094 acres taken on lease by the Government of India, Ministry of Defense. Then it is not understood how the land claimed by the petitioner in Chinnikunta identified in the leased land and further, the Advocate Commissioner has stated that on western side of the Chennikunta i.e. Cherrikunta he found dilapidated structure stated to be Maszid and an abandoned well, which was the base for identification of suit land. It is pertinent to mention here Imarat Kancha wherein the land measuring 2094 acres held on lease by the Government of India, Ministry of Defence is not located in the western side of Chennikunta (Cherrikunta), Imarat Kancha, which is abundantly clear from the Handing Taking Over Plan.”

3. He also raised an objection that the Advocate Commissioner identified that on the western side of Chennikunta, he found dilapidated structures stated to be mazjid and an abandoned well which is the basis for identification of the suit land. But, Imrat Kancha wherein the land measuring 2094 acres is not located on the western side of Chennikunta as per handing taking over plan. The schedule property in the decree does not tally with the schedule property possessed by the petitioners and as such the executing the decree in respect of the property possessed by the petitioners in Sy.No.1/1 of Imrath Kancha does not arise and it is beyond the scope of the execution for the decree. Decree can be executed only in terms of the decree contained in the schedule property. Therefore, requesting the Court to allow the petition.

4. Perusal of the record shows that this Civil Revision Petition is filed by the Union of India through Defence Secretary, New Delhi and also the Director of DRDL, represented by its Research Centre Imarat (RCI), Hyderabad and they are defendants in the suit in OS.No.333 of 1986 and they contested the suit for declaration of title and recovery of possession.

5. The trial Court after considering the entire evidence on record, decreed the suit in favour of the plaintiff and further stated that the plaintiff is entitled for recovery of suit property after eviction of Defendant Nos.1 and 2 if they are found to be in possession of the same.

6. The counsel for the revision petitioners contended that the EP.No. 103 of 2007 was filed after 20 years, but not within 11 years as stated by them and thus the E.P itself is not maintainable. But, the said objection is to be raised before the trial Court at the earliest point of time. Regarding the identity of the property, the contentions raised by the revision petitioners herein were also raised before the trial Court in the EP as such, an Advocate Commissioner was appointed for fixing of the boundaries. The Commissioner executed warrant and in his report he stated respondent Nos.1 to 3 gave work memos at 4:48 pm after completion of the work and the trial Court held that the work memos

are relating to extent of Ac.28.94 guntas and they requested the Advocate Commissioner to demarcate the entire land in 4077 acres in Sy.No.1/1 of Raviryala Village with the help of tipper and fix the boundaries, but the Commissioner executed the warrant strictly in accordance with the directions of the Hon'ble Court as he cannot go beyond the warrant and the objections raised by the respondents are over ruled and accordingly it was held by the trial Court that the entire extent of Ac.16.17 gts ie., 42 sq.yards of land in Chennikunta is found in possession of Research Centre Imarat with specific measurements and the petitioner is entitled for recovery of possession from Reserch Centre Imarat i.e., respondent No.2 herein and allowed the EP and also directed the JDR No.2 to hand over the possession within two months from the date of the order.

7. Admittedly, the revision petitioners contested the suit and they have not preferred appeal against the judgment as such it became final. Though the suit for declaration of title and recovery of possession was allowed in favour of the plaintiffs, the possession was not handed over and after filing of EP the trial Court considering the arguments of both sides directed them to hand over the possession, again they preferred this Civil Revision Petition. In EA No.34 of 2011 in E.P.No.103 of 2007 in O.S.No.333 of 1986 the Advocate Commissioner was appointed by

the I Additional Senior Civil Judge, Ranga Reddy District in an order dated 08.08.2011. Even a perusal of the map filed before the Court shows that Ac.19 situated in Sy.No.243 is a neighboring land to the land placed at the disposal of DRDL on lease. Though the revision petitioners know about the appointment of Advocate Commissioner by the Court, they did not furnish the work memos within time and furnished only after completion of the work by the Commissioner and the said objection was also taken before the trial Court and the trial Court over ruled the objections. Again they preferred this Civil Revision Petition with the same contentions, as judgment in O.S.No.333 of 1986 attained finality, the revision petitioners herein cannot raise the same objections once again. The Commissioner fixed the boundaries of the suit schedule land as follows:-

North :Land of RCI Imrathkancha

South :Land of RCI Imrathkancha

East :Land of RCI Imrathkancha

West :Hyderabad to Srisailam Road Dilapidated Maszid and well.

8. The Commissioner took the help of Mandal Surveyor of Maheshwaram and also after considering the two maps, he fixed the said boundaries. Even the revision petitioners mainly contended that the land in possession of them is different from the land in an extent of 16.19 guntas bearing document No.449 situated at Chennikunta,

Ravirayala Village and absolutely there is no co-relation between both the lands as they are situated in different survey numbers.

9. The counsel for the Respondents relied upon the decision in a case between Pratibha Singh and Another v. Shanti Devi Prasad and another reported in (2003) 2 Supreme Court Cases 330¹ wherein it was held in para Nos. 17 and 20 (c) as under :-

“When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC.”

(c) “It would be in the discretion of the Executing Court to take such steps as may be necessary for fixing the identity of the property. The Executing Court may take assistance from the previous documents of title, the Revenue Records and/or may have a survey carried out by appointing a competent Commission. Nevertheless, the Court shall see that the decree holder gets the property as per agreement to sell as and decreed.”

¹ (2003) 2 SCC 330

10. Trial Court also observed that as per the documents filed by the JDR and the evidence of Mandal Surveyor, Chennikunta which is popularly known as Cherrikunta is part of Imrat Kancha, but not otherwise. Therefore, the contention of JDRs that Imrat Kancha is different from Raviryal does not arise. The trial Court after considering the arguments of both the counsel discussed all the points in detail and passed the order.

11. Therefore, I do not find any merits in the CRP and accordingly the CRP is dismissed.

12. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P. SREE SUDHA

Date: 08.06.2022
PSSK