

THE HON'BLE SRI JUSTICE UJJAL BHUYAN

CIVIL REVISION PETITION No.789 OF 2022

ORDER:

Heard Mr.T.Ramchander Rao, learned counsel for the revision petitioners.

2 Respondent No.1 as the plaintiff had instituted O.S.No.876 of 2012 in which respondent Nos.2 to 13 were arrayed as the defendants. It is stated that the suit was decreed in favour of the plaintiffs, whereafter respondent No1 initiated execution proceedings being E.P.No.13 of 2019. In E.P.No.13 of 2019, the present petitioners who are third parties filed an application under Order I Rule 10 (2) of the Code of Civil Procedure, 1908 (CPC) seeking impleadment as respondents in the execution proceedings. The same was registered as E.A.No.1 of 2021. By the order dated 28.01.2022 passed by the learned IV Senior Civil Judge, City Civil Court, Hyderabad, the petition filed by the petitioners was dismissed. Against this order, the present revision petition has been filed under Article 227 of the Constitution of India.

3 As noted above, petitioners are third parties. They were not defendants in the suit. Learned Court below vide the order dated 28.01.2022 dismissed E.A.No.1 of 2021 filed by the petitioners in the following terms:

“The citations relied by the learned counsel for the petitioners is not applicable to the present facts of the case why because the petitioners filed Order I Rule 10 of CPC petition in execution proceedings if really the petitioners claiming ownership title over the suit schedule property the

petitioners should have filed the claim petition by claiming ownership and by producing the oral and documentary evidence to prove their contentions. Otherwise, the petitioners has to file independent suit by paying Court fee for declaration of title and ownership. Mere filing of Order I Rule 10 of CPC petition in execution proceedings does not survive any purpose to the petitioners. Being the respondent / decree holder he entitled for recovery of possession. There are no obstructions at the time of delivery of possession under Order 21 Rule 97 or 99 of CPC. The petitioner has to move separate proceedings if he has any bonafide rights over the petition schedule property the present petition is not maintainable and it is not in the proper form as such the petition is not maintainable and liable to be dismissed.

12. In the result, the petition is dismissed. No costs.”

4 On due consideration, Court finds no error or infirmity in the view taken by the learned Court below. Learned Court below has rightly held that if the petitioners claim title and ownership over the suit schedule property, they ought to have filed an independent suit for declaration of title and ownership. In execution proceedings initiated by respondent No.1 (plaintiff), they cannot seek declaration of title and ownership by filing petition under Order I Rule 10 CPC. Being the decree holder, respondent No.1 is entitled to seek recovery of possession.

5 That being the position, Court finds no merit in this Civil Revision Petition, which is accordingly dismissed. However, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this revision petition shall also stand dismissed.

UJJAL BHUYAN, J.

Dt: 26.04.2022
Kvsn