

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

TUESDAY, THE TENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION NO: 357 OF 2022

Petition under Section 115 of C.P.C. of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside the Order dated. 09-11-2021 passed in EA No. 95 OF 2015 IN EP.No. 170 OF 1992 on the file of Honourable II Additional Senior Civil Judge, Warangal and grant an opportunity to the petitioners to lead evidence in the interests of justice and pass all necessary orders for the said purpose.

Between:

1. Smt.Mohammad Qamarunnisa Begum, W/o. Sri Yakub Khan, Aged about 37 years, Occ. Household work, R/o H.No.16-7-141/1, Girmajipet, Near Old Grain Market, Govindarajulagutta, Warangal City. Warangal District.
2. Mohammad Reshmaunnisa Begum, D/o. Late Sri Khaizarkhan Aged about 33 years, Occ. Nol, R/o H.No.16-7-141/1, Girmajipet, Near Old gram Market, Govindarajulagutta, Warangal City./ Warangal District.
3. Mohammad Faheemunnisa Begum, D/o Late Sri Khaizarkhan, Aged about 28 years, Occ. Student, R/o H.No.16-7-141/1, Girmajipet, Near Old grain Market, Govindarajulagutta, Warangal City Warangal District.

...Petitioners/Petitioners/Third Party

AND

1. Katkam Sathiah, S/o Sri Venkataiah, Aged 55 years, Occ. business R/o Station Road, Warangal City, Warangal. k.Shankar Prasad Rao, S/o Rajeswara Rao, Advocate, Advocates Colony Hanamkonda, Warangal (Transferee of the D.H.)
 2. M.G.Pohekar, S/o Sri Govinda Rao, Aged 77 years, Occ. Business, R/o Dilsukhnagar, Hyderabad.
 3. The Selection Grade Municipality, Warangal, Represented by its Special Officer Warangal.
 4. Smt. M.Naseema, W/o. Sri M.G.Pohekar, Aged 66 years, Occ. Household, R/o Dilsukhnagar, Hyderabad.
 5. M.Raja, S/o M.G.Pohekar, Aged 46 years, Occ. Employee, R/o. Dilsukhnagar, Hyderabad.
- (Respondents No. 2 to 5 are formal parties)

...Respondents/Respondents

6. Smt.Patan Noorjahan Begum, W/o Late Sri.Khaizarkhan, Aged about 78 years, Occ. Senior Citizen, R/o. H.No.16-7-141/1, Girmajipet, Near Old grain Market, Govindarajulagutta, Warangal City, Warangal District.
7. Mohammad Yakub Khan, S/o. Late Sri. Khaizarkhan, Aged about 51 years, Occ. Water Supplier, R/o. H.No.16-7-141/1, Girmajipet, Near Old grain Market, Govindarajulagutta, Warangal City, Warangal District.
8. Smt.Patan Nasimunnisa Begum, (Died)

...Respondents/Petitioners/Third Parties

Counsel for the Petitioners: SRI. M. SRINIVASA SWARUP

Counsel for the Respondents: A. PRABHAKAR RAO

The Court made the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRP.NO.357 of 2022

JUDGMENT :

Being aggrieved by the Judgment and Decree dated 09-11-2021 in E.A.No.95 of 2015 in E.P.No.170 of 1992 on the file of II Addl. Senior Civil Judge, Warangal, and the petitioner/Third parties moved this present Civil Revision challenging the above referred order on the following grounds.

2. The order of the Court below is contrary to law, facts on record and settled legal position. The order of the Court is based on technicalities but not on merits. The Court below ought to have appreciated the settled legal principle that for the mistake of Advocate, the parties should not suffer. The petitioners further claimed that the Court below failed to understand the settled legal position but a claim petition has to be decided as if it is a suit by adducing evidence on both parties and should have granted an opportunity to the petitioner for adducing evidence. But the Court below failed to look into the petitioners are not parties to the suit and the execution proceedings thereby traveled beyond the decree which is against the settled law. The petitioners have claimed that

the Court below committed wrong by saying that there is a conditional order and the same was not complied with but there was no such conditional order. With this, the petitioners sought for setting aside the order of the Court referred above.

3. As could be seen from the record placed before this Court, E.A.No.95 of 2015 has been filed by the petitioners No.1 to 6, who are in fact 3rd parties to the execution proceedings vide E.P.No.170 of 1992. As per the affidavit filed in support of the petition, the petitioner No.1 is the mother of the remaining petitioners, the petitioner No.4 filed an affidavit in support of the petition and deposed that her mother is a senior citizen, aged about 73 years and due to advanced age, she was unable to move from the bed. The father of petitioner No.4 died about 3 years prior to filing the interlocutory application. All the petitioners are residing in the schedule property. They have been carrying business under the name and style of "Yakub Khan Cement Works" in a part of the petition schedule property and depending upon the petty business and also by supplying water to the locality people.

4. The petitioners have claimed that on 06-08-2015, the respondent along with a gang of workers and unknown muscle men, visited the schedule property and by showing warrant issued

by a Court, started dismantling the building without giving any breathing time to the petitioners and when they questioned and tried to stop illegal dismantling and tried to prevent them, they pushed the petitioners and threatened them with dire consequences by showing the Court warrant but did not furnish copies of the documents and did not allow any opportunity of being heard. The petitioners have claimed that all the above referred persons surprisingly started dismantling the house owned by the petitioners, thereby the petitioners were under shock. The petitioners have claimed that their property was damaged but they remained in the possession of the property, thereby they prayed for adjudication of the claim of the petitioner and also sought for damages to an amount of Rs.3,00,000/- from the respondent.

5. This claim petition was opposed by the respondent/decree holder. The second decree holder filed counter affidavit and informed the Court that the judgment and decree in O.S.No.233 of 1985 was set aside in an appeal vide A.S.No.58 of 1999. The petitioners have got knowledge about the orders in the appeal suit but they suppressed the same and claiming as if they are in possession of the property. The respondents/decree holder claimed that the petitioners are not in possession of the schedule

property, there is no prima facie case, balance of convenience was not in their favour and they came to Court with uncleaned hands. The respondents have further claimed that there was no temporary construction in the schedule property as claimed by the petitioners. Therefore, the question of petitioners residing in the property does not arise. The respondents further stated that on 02-07-2015, the execution Court was pleased to order the break opening the locks, preparation of inventory and dismantlement of the temporary structures. Accordingly, the bailiff complied the order and delivered the vacant possession to the respondents/deed holders under a cover of panchanama. The bailiff has filed his report on 07-08-2015 before the Court and the immovable properties found in the schedule property were kept in a rental portion, thereby the respondent sought for dismissal of the claim application.

6. The respondents further stated that respondent No.1/deed holder No.2 got raised a compound wall with cement bricks encircling the property to prevent the encroachment. The 3rd party petitioners have demolished the compound wall, thereby, he got filed a complaint and the same was registered as crime No.267 of 2015 of police, Intozargunj, Warangal. The 3rd party

petitioners are none other than the legal heirs of Kaizer Khan, who died on 19-09-2012 and during his life time, the said Kaizer Khan got filed a petition under Order 21 Rule 97 and Section 101 C.P.C. vide E.A.No.11 of 1998 and the same was dismissed by the Court on 22-04-1999. The petitioners have got knowledge about the dismissal of the earlier claim application but they did not disclose the same. Therefore, according to the respondent, the Court below issued a delivery warrant in favour of the second decree holder. Subsequently, Kaizer Khan filed C.R.P.No.3408 of 2004 before the High Court but the same was dismissed by order dated 02-09-2011. The said order is binding on the petitioner being legal representatives of Kaizer Khan. Therefore, the respondent/decree holder has claimed that the petitioners have no right over the property and sought for dismissal of the application.

7. The Court below having heard both parties, dismissed the claim application by order which is impugned in the present revision.

8. It is true, a claim application shall be decided as if it was a suit. However, the circumstances explained by both parties clearly indicates that prior to the present application filed by the petitioner/ 3rd parties, the father of petitioner No.4 - husband of

the petitioner No.1 who claimed right over the property filed a similar application claiming right and title on the schedule mentioned property. The same was dismissed on merits. The revision preferred by the said Kaizer Khan before the High Court was also dismissed. The claim petitioners did not dispute these averments. Therefore, the petitioners being legal representatives of Kaizer Khan, the order in the earlier claim petition and order of the High Court in the revision preferred by him are binding upon the petitioner.

9. The petitioners did not state anything about the earlier proceeding and filed the claim application as if they have got title on the property. They did not choose to adduce any oral evidence, there was no obligation on the Court to direct the parties to adduce evidence and the Court below rightly decided the application on the basis of arguments. The petitioners/claimants i.e., 3rd parties who said to have right on the property did not choose to produce any document in support of their claim. They did not deny the averments and allegations made by the second decree holder in the counter affidavit including the dismissal of earlier claim application of said Kaizer Khan or orders of the High Court, the C.R.P. preferred by him.

10. Therefore, except the affidavit filed in support of the application, the petitioner did not produce any proof in support of their claim, thereby the Court below rightly dismissed the application. There is no necessity to interfere with the said finding as such, the C.R.P. is liable to be dismissed.

11. In the result, petition is dismissed.

Consequently, Miscellaneous applications if any, are closed. No costs.

//TRUE COPY//

Sd/- T. JAYASREE
ASSISTANT REGISTRAR


SECTION OFFICER

- To,
1. The II Additional Senior Civil Judge, at Warangal.
 2. One CC to Sri. M. SRINIVASA SWARUP, Advocate [OPUC]
 3. One CC to Sri. A. PRABHAKAR RAO, Advocate [OPUC]
 4. Two CD Copies

PSR

pt



HIGH COURT

DATED:10/01/2023

JUDGMENT

CRP.No.357 of 2022



DISMISSING THE CIVIL REVISION PETITION.

⑥ VLV
8/2/23