
(2013) 10 AP CK 0098
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4000 of 2013

Eleti Raji Reddy and Others	Vs	APPELLANT
Pusukuri Damodar Rao (dead) per L.Rs.		RESPONDENT

Date of Decision : 19-10-2013

Acts Referred:

Citation : (2014) 1 ALD 344 : (2014) 2 ALT 45

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : C. Ramesh Sagar, for the Appellant; Koteswara Rao for the Respondent Nos. 2 to 6, for the Respondent

Judgement

C. Praveen Kumar, J.—This civil revision petition is filed u/s 115 of the CPC aggrieved by the order dated 14.8.2013 passed in EA No. 47 of 2012 in EP No. 1 of 2006 on the file of the Junior Civil Judge, Peddapalli.

The facts in issue are as under:

The first respondent/plaintiff filed OS No. 141 of 1983 on the file of the District Munsiff, Sultanabad seeking a declaration of title and perpetual injunction in respect of suit schedule property i.e., an extent of Acs. 3-38 guntas covered by Sy. No. 177 situated at Dharmaram H/o Bommareddipalli Village of Sultanabad Taluq. Subsequently, the plaintiff filed IA No. 511 of 1988 seeking amendment of the suit plaint and also claiming recovery of possession of 0-38 guntas of land located in North-East portion shown in red colour in the suit map annexed to the plaint. The said application was allowed on 25.8.1988.

Pursuant to the orders of the District Judge, Karimnagar in OP No. 12 of 1983, the said suit was transferred from the Court of District Munsiff at Sultanabad to the Court of Principal District Munsiff, Karimnagar and the same came to be renumbered as O.S. 191 of 1992. On 31.7.1992 the above suit was partly decreed holding the respondent/plaintiff as the owner of the land to an extent of Acs. 3-00 while rejecting the claim in respect of 0-38 guntas of land. Aggrieved

by the same, the plaintiff preferred AS No. 29 of 1992 on the file of the I-Additional District Judge, Karimnagar. By his judgment and decree dated 26.7.1996 the learned I-Additional District Judge, Karimnagar allowed the appeal with costs. Aggrieved by the same, the defendants preferred SA No. 527 of 1996 before this Court and by orders dated 21.4.2003, this Court set aside the judgment and decree passed by the appellate Court in AS No. 29 of 1992 and remanded the matter for fresh disposal after considering the oral and documentary evidence.

2. On remand, the learned I-Additional District Judge, Karimnagar allowed the appeal setting aside the judgment and decree passed by the lower Court with regard to 0-38 guntas of land. The relief of declaration of title and delivery of possession was granted in favour of the plaintiff with costs. The said judgment has become final. On 2.12.2005, the decree holder filed EP No. 1 of 2006 on the file of the Junior Civil Judge, Peddapalli for execution of the decree dated 16.12.2003 passed by the lower appellate Court in AS No. 29 of 1992.

3. Pending the said proceedings, the petitioners herein filed CRP No. 1027 of 2006 contending that the Court at Peddapalli has no jurisdiction to try the execution petition. By order dated 20.3.2006, this Court disposed of the said revision granting leave and liberty to the revision petitioner to raise all objections including the objection with regard to jurisdiction before the said Court. Pending the said E.P., the petitioner herein filed EA No. 47 of 2012 seeking dismissal of E.P. as not maintainable, since the property for which delivery of possession sought for was not specified with boundaries. Aggrieved by the said order, the present revision came to be filed.

4. The learned Counsel for the petitioners mainly submits that the decree passed without identification of the boundaries is not executable and as such the proceedings in E.P., cannot be continued. According to him, neither the original suit, amended plaint nor the decree show the boundaries to the property in question. He submits that unless the property in question is identifiable, no decree can be passed in respect of the same and the decree passed without proper identification of the boundaries is a non executable decree. He further submits that the Court at Peddapalli has no jurisdiction to entertain the petition on the ground that the suit was originally filed in a Court at Sultanabad and thereafter it was transferred to Karimnagar and at no point of time, the case was tried at Peddapalli. He thus submits that entertaining the E.P., by the Court at Peddapalli is bad in law and without jurisdiction.

5. On the other hand, the learned Counsel for the respondents opposed the said application. He submits that all the contentions raised by the learned Counsel for the petitioners were considered by the trial Court and as the reasoning given by the Court below are cogent and convincing, the same warrants no interference by this Court at this stage.

6. The suit is of the year 1983 and till today, the respondents/plaintiffs are not

able to enjoy the fruits of the decree. This Court in Satyawati Vs. Rajinder Singh and Another,), after referring the judgment of the Apex Court in Babu Lal Vs. Hazari Lal Kishori Lal and Others, , observed as under:--

...Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.

17. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

Keeping in view the above principle of law, I shall now proceed to deal with the matter.

7. The argument of the learned Counsel for the petitioners that the plaint, amended plaint and also the appellate Court order does not show the boundaries appears to be incorrect. The amended plaint, which was filed in the year, 1988 contains the schedule plan and the prayer portion of the said amended plaint reads as under:--"Recovery of possession of 0-38 guntas of land located in North-Eastern portion shown in red colour in the order annexed to the plaint". The entire dispute is only with regard to 0-38 guntas of land. The sketch map showing the disputed land, which is claimed by the plaintiff is filed along with the amended plaint. The appellate Court after referring to the description of the property held that the plaintiff is the owner and possessor of the suit land admeasuring Acs. 3-38 guntas situated in Sy. No. 177 of Dharmaram H/o Bommireddipalli Village of Sultanabad Taluq. Therefore, the contention of the learned Counsel for the petitioners that plan showing the boundaries is not annexed to the amended plaint and also to the appellate Court order cannot be accepted. Further the Court below has clearly held that if there is any difficulty in identifying the property while executing the decree, it is for the bailiff to report the same.

8. The argument of the learned Counsel for the petitioner that the Court at Peddapalli has no jurisdiction to entertain the petition and even if any petition is entertained, there are no records to identify the property cannot be accepted. As stated above, the original suit was filed at Sultanabad and thereafter, it was transferred to the Court of Principal District Munsiff, Court at Karimnagar. It is not in dispute that the Court at Sultanabad was bifurcated into two Courts and a new Court came to be constituted at Peddapalli.

9. Before proceeding further, it would be proper to refer Section 37 of Civil Procedure Code, 1908, which reads as under:

37. Definition of Court which passed a decree.--The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of

decrees, unless there is anything repugnant in the subject or context, be deemed to include,--

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.--The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

A plain reading of the explanation leaves no room of doubt that the Court which has passed the decree does not cease to have jurisdiction even if the area within its territory has been transferred to another Court. Secondly, the Court then either existing or newly created to which earlier area has been transferred also has jurisdiction as if the same Court has passed the decree. The said view is fortified by the judgment of this Court in *Shriram Chits (P) Ltd., Jangareddigudem v. Gundumali Manjulabai and others*, 2010 (3) ALD 344. A similar view was taken by this Court in *Pasala Suryachandra Rao Vs. Vatti Venkata Ranga Pardhasaradhi*,

10. As the Court at Sultanabad was bifurcated which resulted in constitution of a Court at Peddapalli and in view of the Explanation to Section 37 C.P.C., the Court which passed the decree and the Court to whose jurisdiction the area has been transferred, can maintain the execution petition. Therefore, the contention of the learned Counsel for the petitioners that the Court at Peddapalli has no jurisdiction cannot be accepted. The judgments of the Apex Court in *Nahar Singh Vs. Harnak Singh and Others*, and *Ramankutty Vs. Avara*, relied upon by the Counsel for the petitioner are not applicable to the facts of the present case, as the amended plaint, the judgment and decree of the appellate Court refers to 0-38 guntas of land with boundaries. As observed earlier, if there is any difficulty in identifying the property, the bailiff has to report the same. At this stage, it cannot be said that the property is unidentifiable.

11. Finally the learned Counsel for the petitioners contended that till date the Legal Representatives of judgment debtor are not brought on record and the said ground alone is sufficient to allow the civil revision petition. The same appears to be incorrect, as the Legal Representatives of judgment debtor are already on record as judgment debtors 4 to 6. Viewed from any angle this Court of the view that there are no merits in the revision and the same is liable to be dismissed.

Accordingly, the civil revision petition is dismissed. Consequently, the miscellaneous petitions pending if any shall closed. No order as to costs.