

(2013) 03 AP CK 0086

In the Andhra Pradesh High Court

Case No : SA. MP. No. 853 of 2011 in Second Appeal No. 173 of 2010 and Civil Revision Petition No. 4505 of 2011

Kondapati Tejo Ananthalakshmi and Another

APPELLANT

Vs

Kondepati Manikyam and Two Others
 Kondepati
Manikyam and Two Others Vs Kondapati Tejo Ananthalakshmi
and Another

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22

Citation : (2013) 6 ALD 402 : (2014) 1 ALT 226

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Venkateswara Rao Gudapati in SA.MP. No. 853 of 2011 in Second Appeal No. 173 of 2010 and Smt N.P. Anjana Devi in Civil Revision Petition No. 4505 of 2011, for the Appellant; N.P. Anjana Devi in SA.MP. No. 853 of 2011 in Second Appeal No. 173 of 2010 and Sri Venkateswara Rao Gudapati in Civil Revision Petition No. 4505 of 2011, for the Respondent

Judgement

Samudrala Govindarajulu, J.—The petitioners/appellants in S.A.M.P. No. 853 of 2011 seek direction to the respondents not to dispossess the petitioners from the plaint schedule property pending disposal of the second appeal. After admission of the second appeal on substantial questions of law, this Court on 6.7.2010 in S.A.M.P. No. 371 of 2010 ordered status quo until further orders. This status quo order was obtained by the appellants without disclosing delivery proceedings on 08.01.2010 in the execution proceedings in the executing Court and also the appellant's own petition filed therein on 25.02.2010 by way of EA.SR. No. 1479 of 2010 in E.P. No. 184 of 2009 to declare the delivery effected on 8.1.2010 as null and void and not to record the delivery. Subsequently when the said fact was brought to the notice of this Court in SA.M.P. No. 119 of 2011 requesting to vacate the status quo order, this Court by order dated 07.02.2011 vacated the status quo order. But while vacating the status quo order, this Court permitted the appellants to file another application for renewing the status quo order in the

event of the statement of delivery of possession on 08.01.2010 is incorrect. Thereupon, the appellants become emboldened to file the present petition for giving directions to the respondents on the ground that there was no physical delivery of possession on 08.01.2010. While so, the executing Court on 29.4.2011 after hearing all the counsel, passed order in EA.SR.No. 1479 of 2010 in EP No. 184 of 2009 dismissing the same finding that the delivery is effected according to law on 08.01.2009(mistake for 2010). Questioning the same, the Judgment Debtors who are the appellants in the second appeal filed CRP No. 4505 of 2011. On 08.12.2011 this Court in CRP directed the Additional District Judge, Kovvur to send report as to whether physical possession of the schedule property has been delivered to the decree holder or not, in order to find out whether physical possession of the property was delivered to the decree holder or not. The Additional District Judge, Kovvur after recording the statements of deponents sent report to this Court to the effect that there are discrepancies in the statements of deponents and found as follows:

The inconsistencies above discussed with regard to the contents of the delivery receipt and the manner in which the alleged delivery was effected probabilities the fact that delivery was not effected under the delivery receipt dated 8.1.2010 and the delivery receipt was prepared by obtaining the signatures of the alleged mediators and witnesses, which includes the 1st JDR.

2. The said enquiry report is invalid as it was an unilateral report by the Additional District Judge. It is not as if the Additional District Judge was making an enquiry on administrative side to record statements of deponents and to give one-sided report. The Additional District Judge was directed to give report on judicial side in judicial proceedings. Therefore, he should have recorded the statements of witnesses in the presence of all the parties and giving due opportunity to the opponents to cross-examine the said deponents. Since it was not done in this case, the said report of the Additional District Judge has no value in the eye of law. In any event, natural and minor discrepancies do occur when several persons were giving statements. They cannot be sole basis for reporting that there was no physical delivery.

3. This is not a case where the field assistant/bailiff of the Court prepared the delivery receipt by sitting in the Court compound without going to the suit village at all. Though some of the mediators and witnesses in the delivery warrant including the 1st Judgment Debtor speak as if their signatures were obtained in the village, they could not explain as to what made them to sign in such manner when the delivery mentioned in the delivery receipt did not allegedly take place in their presence.

4. The field assistant/bailiff, decree holder and mediators/witnesses went to the fields out of which item No.1 and 3 are located contiguously and item No.2 was located at some distance and is within the sight of items 1 and 3. Though Judgment Debtors 2 and 3 were not present at the suit lands, delivery was affected by the bailiff to the decree holders, at the land. Delivery was also

published by way of tom-tom in the village. All these procedures indicate that there is valid and physical delivery of the properties on 08.01.2010 itself to the decree holder. This fact was not disclosed by the appellants in their stay petition in the second appeal.

5. It is contended by the petitioner's counsel that no notice was served of the delivery to the appellants/Judgment Debtors 2 and 3. Unless execution of the decree is beyond two years of passing of the same, no notice to the Judgment Debtors is necessary for effecting delivery in pursuance of decree of civil Court. Order XXI CPC does not contemplate prior giving of notice to the Judgment Debtors for delivery. It is only under Rule 22 of Order XXI of CPC, notice is contemplated in case the execution proceedings are instituted beyond two years of passing of the decree. In that view of the matter, I am of the opinion that there is valid and physical delivery of items 1 to 3 of the plaint schedule to the decree holder on 08.01.2010 itself. I find no reason to interfere with the impugned order passed by the executing Court; and I also find no reason to issue any directions to the respondents in the second appeal pending the second appeal. The status quo order was rightly vacated in the second appeal by this Court. In the result, CRP No. 4505 of 2011 and SA.M.P. No.853 of 2011 in Second Appeal No.173 of 2010 are dismissed.