

(2001) 04 AP CK 0026
In the Andhra Pradesh High Court
Case No : CRP No. 5653 of 2000

P. Venkamma

APPELLANT

Vs

Sayana Venkata Rathnam and Others

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 35, Order 21 Rule 97, Order 21 Rule 98

Citation : (2001) 3 ALD 518 : (2001) 3 ALT 447

Hon'ble Judges : T.Ch. Surya Rao, J

Bench : Single Bench

Advocate : Mr. Addepalli Suryanarayana, for the Appellant; Mr. Anji Reddy, Counsel, for the Respondent

Judgement

1. The present civil revision petition will not retain me any longer inasmuch as it can be disposed of on the question of its maintainability.
2. The revision petitioner seeks to assail the order dated 30-11-2000 passed by the learned I Additional Junior Civil Judge, Ongole in EP No.513 of 1998 in OS No.5 of 1990. The execution petition was filed under Order 21, Rule 35 of the CPC (for short "the code") seeking delivery of the property which is the subject-matter of OS No.5 of 1990. The revision petitioner who is the fourth respondent in the execution petition sought to resist that application on the premise that she was a third party and not being a party to the suit in OS 5 of 1990 as she was in possession of the subject-matter of the suit property independently in her own right cannot be ordered to be removed from her possession. In fact when execution petition was filed seeking execution of the decree passed in OS No.5 of 1990 against the judgment debtors therein the revision petitioner came on record on her own accord after having filed an application in regard thereto and having been allowed by the Court. Ultimately after hearing both the parties, the Court below passed the impugned order allowing the EP and directing a fresh delivery warrant to be issued so as to deliver the property after removing the

obstruction caused by the fourth respondent.

3. It is obvious that initially the executing Court directed a warrant to be issued for delivery and when the delivery could not be effected on the obstruction made by the revision petitioner and after the revision petitioner came as aforesaid on record on her own accord after hearing either side the Court below directed to issue a fresh delivery warrant for delivery of the property by removing the obstruction caused by the fourth respondent-revision petitioner. In usual course, when there was an obstruction by the third party for delivery, it is open to the decree holder to file necessary application under Order 21, Rule 97 of the Code for removal of the obstruction. If for any reason the third party who claims to be in possession of the property in his own right is dispossessed, it is open to him to come forward with an application under Rule 99 of the Code so as to maintain his possession. In either course an order to be passed after conducting necessary investigation as envisaged under Rules 98 and 100 of Order 21 of the Code. In view of the amended provisions it is an appealable order. As per Rule 101 of the Code, all questions including the question relating to right, title or interest in the property arising between the parties to the proceeding shall have to be determined when such application is filed by either of the parties either under Rule 97 or under Rule 99 of the Code. Thus, the legal position is obvious, that order becomes an appealable order.

4. Now that the impugned order has been passed in the execution petition of course after hearing the third party who has come on record as 4th respondent in the execution petition. The order passed although in the execution proceedings, neither on the requisite application to be filed under Rule 97 by the decree holder nor on the application to be filed under Rule 99 of the Code by the third party, nonetheless, it is an order passed directing the removal of the obstruction, by issuing the warrant for delivery of the subject-matter of the suit. Therefore, when once the Court orders for removal of obstruction, it is nothing but an order which shall have to be construed as an order having been passed under Rule 97 of the Code. I am fortified in my above view by a judgment of the Apex Court *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, wherein the Supreme Court has categorically held at page 859 that it is an order necessarily to be one falling within the scope and ambit of Order 21, Rule 97 of the Code. Therefore, once it is construed as an order passed under Rule 97 of the Code it becomes a deemed decree and is appealable. The present revision petition in that view of the matter deserves to be dismissed as not maintainable".

5. It is for the revision petitioner to file the appeal or pursue her remedy otherwise. Inasmuch as the revision petition is now being dismissed on the ground of its maintainability without touching the merits of the matter it is expedient in the interest of justice to allow the status quo to be maintained till such time the appeal is filed the status quo shall cease to be in operation the moment the appeal is filed. The revision petitioner is granted time till 17-6-2001

to file the appeal which is the outer date. Under the circumstances, no order as to costs.