

(2014) 08 AP CK 0108

In the Andhra Pradesh High Court

Case No : Civil Revision Petition Nos. 4100, 4022 of 2013 and 641 of 2014

T.N.V. Ravi Kumar

APPELLANT

Vs

Sumeet Pal Singh

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 103, Order 21 Rule 106, Order 21 Rule 58, Order 21 Rule 97
Criminal Procedure Code, 1973 (CrPC) — Section 482
Transfer of Property Act, 1882 — Section 106

Citation : (2015) 2 ALD 599 : (2015) 3 ALT 12

Hon'ble Judges : L.N. Reddy, J

Bench : Single Bench

Advocate : J. Prabhakar and M. Shiva Kumar, Advocate for the Appellant;
Ramakrishna K., Manjari S. Ganu and K. Ramakrishna, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—These three revisions are filed by the plaintiff in O.S. No. 912 of 2008 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad. For the sake of convenience, the parties are referred to as arrayed in C.R.P. No. 4022 of 2013.

2. The petitioner filed the suit against respondent Nos. 2 to 4 for eviction from the suit schedule house at road No. 12, Banjara Hills. It was pleaded that respondent Nos. 2 to 4 are the tenants of the petitioner and though a notice under Section 106 of the Transfer of Property Act was issued to them, they did not vacate the premises. After contest by respondent Nos. 2 to 4, the trial Court decreed the suit on 30-03-2011.

3. After the decree became final, the petitioner filed E.P. No. 159 of 2012 for recovery of possession. In the said E.P. the 1st respondent filed E.A No. 115 of 2013 under Rules 97 to 101 of Order XXI CPC, with a prayer to dismiss the E.P. He pleaded that he has rights in the E.P. schedule property and the decree

obtained by the petitioner against respondent Nos. 2 to 4 is collusive, in nature. An objection was raised by the petitioner to the filing of the said E.A. After considering the same, the executing Court passed an order dated 26-03-2013 directing that the claim petition be registered and notice be issued to the parties thereto. C.R.P. No. 4022 of 2013 is filed against that order. In addition to that, C.R.P. No. 4100 of 2013 is filed challenging the very numbering of E.A No. 115 of 2013.

4. Apart from raising objections at the threshold itself, the petitioner filed E.A No. 70 of 2014 under Section 151 CPC, with a prayer to reject E.A No. 115 of 2013. Through an elaborate order dated 12-02-2014, the executing Court dismissed the E.A. C.R.P. No. 641 of 2014 is filed against that order.

5. Sri J. Prabhakar, learned counsel for the petitioner submits that basically petition under Rules 97 to 101 of Order XXI can be filed only by a decree holder with a prayer to remove obstructions, if any, caused in the course of execution and that in the instant case, an application under that provision was filed by a third party i.e., the 1st respondent herein. He contends that assuming that even third parties can file applications under Rules 97 to 101 of Order XXI CPC, one of the fundamental requirements is that the person filing the application must be in possession of the property and that in the instant case, the 1st respondent is not in possession of the property. He contends that the executing Court ought not to have entertained E.A No. 115 of 2013 filed by the 1st respondent nor was expected to issue notice to the concerned parties.

6. Learned counsel further submits that at more places than one, the 1st respondent stated that he is not in possession of the property and that single fact is sufficient to reject I.A. No. 115 of 2013. He contends that the 1st respondent filed independent suit, being, O.S. No. 2239 of 2103 in the Court of V Junior Civil Judge, City Civil Court, Hyderabad against several persons in relation to this very property and the same was dismissed as withdrawn insofar as the petitioner is concerned. He submits that as of now, there is no basis for the 1st respondent to claim rights over the schedule property. As regards the numbering of E.A and overruling of objections, the same contentions were advanced.

7. Sri Vedula Venkataramana, learned Senior Counsel for the 1st respondent, on the other hand, submits that a claim petition under Rule 97 of Order XXI CPC can be filed not only by a decree holder but also a third party. He submits that the requirement that the claimant must be in possession of the property applies only when application is filed under Rule 58 of Order XXI, but not when it is filed under Rules 97 and 99 of Order XXI CPC. He contends that those very questions would be adjudicated and determined in the course of enquiry, particularly, when the CPC mandates that a claim petition filed by third parties to an execution petition must be tried as an independent suit.

8. Reliance is placed upon certain precedents by both the learned counsel.

9. The petitioner obtained a decree for eviction against respondent Nos. 2, 3 and

4 and the decree has become final. Since the judgment debtors i.e., respondent Nos. 2 to 4 did not vacate the premises, he filed E.P. No. 159 of 2012. When the E.P. was pending, the 1st respondent came forward with a claim petition, being E.A No. 115 of 2013, by invoking Rules 97 to 101 of Order XXI CPC. The petitioner raised objections in different forms as to the very maintainability of the E.A.

10. The gist of the contentions of the respective parties is that while the petitioner claims to have purchased the suit schedule property from his vendors, the 1st respondent pleaded that the title did not accrue to the vendor of the petitioner, much less to the petitioner. It is not necessary to refer to the contentions in relation thereto in detail. On receipt of notice in E.A No. 115 of 2013, the petitioner filed a detailed counter, with a prayer to dismiss the E.A with costs of Rs. 50,000/-. Extensive reference was made to the source of his title as well as the nature of the claim of the respondents. It was stated that O.S. No. 7124 of 2005 filed by the 1st respondent was dismissed by the Court of V Junior Civil Judge, City Civil Court, Hyderabad, but when A.S No. 16 of 2008 filed against the decree in the suit was allowed by the Court of Chief Judge, City Civil Court, Hyderabad, the petitioner filed Second Appeal No. 449 of 2014 and obtained an interim order therein. It was also stated that when the 1st respondent is not in possession of the suit schedule property, there was no basis for filing the E.A.

11. These three revisions connote the objections to (a) the numbering of E.A No. 115 of 2013; (b) the entertaining of E.A and taking further steps therein and (c) the refusal to reject the E.A when a specific application in relation thereto is filed. This is not the occasion to deal with the merits or otherwise of the claims made by the parties, vis-?-vis the property. The first contention of the petitioner is that an E.A under Rule 97 of Order XXI CPC can be filed only by the decree holder, and the one filed by a third party i.e., the 1st respondent ought not to have been numbered at all or for that matter, further steps ought not to have been taken.

12. It is no doubt true that the objective underlying Rule 97 is removal of obstruction for recovery of possession of immovable property in the course of execution of a decree; and the language thereof is suggestive of the filing of such application by the decree holder, for removal of obstructions. The scope of this rule was examined by the Supreme Court in several judgments. In *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, , the Supreme Court held that not only a decree holder, but also a third party can file an application under Rule 97 of Order XXI CPC.

13. In *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another*, , the Supreme Court took the view that the expression "any person" occurring in Rule 97 would take in its hold, the third party also, in case he intends to offer resistance or objection for delivery of possession to the decree holder. The relevant portion of the judgment reads:

"At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by- "any person" in obtaining possession of the property such decree- holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down."

14. This was followed in subsequent judgments of the Supreme Court as well as the High Courts. This Court followed the same in *Achi Ramulu (Died) Per LRs. Vs. Kunapareddy Vijaya Kumar (Died) per LRs.*, . Similar view was expressed vis-à-vis the adjudication of an application filed under Rule 99 of Order XXI in *Tanzeem-e-Sufia Vs. Bibi Haliman and Others*, .

15. Therefore, the objection raised by the petitioner in this behalf cannot be sustained in law.

16. The second contention advanced by the petitioner is that the 1st respondent was never in possession of the property and the question of obstructing delivery of possession or making an attempt to protect his possession does not arise. The ratio of the judgments of the Supreme Court in *Brahmdeo Chaudhary's* case (supra) and *Silverline Forum's* case (supra) constitutes an answer, for this contention also. When the expression "any person" occurring in Rule 97 was held to be wide enough to take in its fold, even a third party, this Court cannot read into it, the factors such as possession over the property. The question as to how far the claim of a third party is valid, needs to be considered at the enquiry of the claim petition, but not at the threshold. Therefore, the objection raised by the appellant for numbering of E.A 115 of 2013 or entertaining thereof by the executing Court cannot be sustained in law.

17. The petitioner filed E.A No. 70 of 2014, with a prayer to reject E.A No. 115 of 2013. The prayer is akin to the one, which is referable to Rule 11 of Order VII CPC. The petitioner did not invoke that provision, may be on advice. However, he invoked Section 151 CPC.

18. It is fairly well established that an application filed under Rules 58, 97 or 99 of Order XXI is required to be decided as though it is a suit. This is evident from the language employed in Rules 58, 101 and 103 of Order XXI. Once an application is equated to a suit, the procedure prescribed for a suit would apply to execution petitions and the applications filed therein.

19. Three aspects become relevant here. Firstly, when there exists a specific provision for rejection of a plaint, the petitioner ought to have filed the

application under that provision which is applicable for rejection of a plaint, for rejection of E.A No. 115 of 2013. Secondly, Rule 11 of Order VII recognizes certain specific grounds as the basis for rejection of a plaint and howsoever strong a reason or ground may be, does not constitute the basis for rejection of a plaint unless it fits into those mentioned in Rule 11. None of the grounds pleaded by the petitioner fit into that provision. The third aspect in this behalf is that the contents of the plaint must be taken on their face value for rejection of a plaint and no external material can be looked into. The petitioner relied upon several factors outside the E.A. If these parameters are applied to the present case, the application filed by the petitioner becomes totally untenable.

20. Once a suit is numbered by a Court of competent jurisdiction, the proceedings therein would terminate only after trial, unless it was dismissed for default or an ex parte decree is passed. The rejection of a plaint is an extraordinary facility, created in favour of a defendant; subject to his establishing the ingredients of Rule 11 of Order VII CPC. The plaint, or for that matter, a claim petition in an E.P., cannot be rejected on the ground that it is devoid of merits. The conclusions on such grounds can be arrived at, only after the trial.

21. In *G. Ganesan and Others Vs. J. Surendran and Others*, the learned single Judge of Madras High Court took the view that a decree holder in a suit cannot be required to undergo ordeal of enquiry in an application filed under Rule 97 of Order XXI CPC, if there are no merits in it. It was also held that if there is no evidence to prove the actual possession of the third party, the petition filed by him under that provision is not maintainable. The obstruction petition/claim petition in that case was struck off by the High Court in exercise of its powers under Section 115 CPC.

22. With great respect to the learned Judge, the proceedings under the CPC cannot be subjected to the same treatment as are the quash petitions under Section 482 Cr.P.C in a criminal case. Except an application under Rule 11 of Order VII CPC, there is no other facility for premature termination of such proceedings.

23. Therefore, the revisions are dismissed. However, the executing Court shall make an endeavour to dispose of E.A No. 115 of 2013, as early as possible, preferable within eight weeks from the date of receipt of a copy of this order, uninfluenced by any observations made herein. It is also directed that the tenants i.e., respondent Nos. 2 to 4 shall be under obligation to pay the undisputed rents for the premises on or before 10th of every month, during the pendency of the E.A.

24. The miscellaneous petitions filed in these revisions shall also stand disposed of. There shall be no order as to costs.