
(2006) 06 AP CK 0120
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6779 of 2003

Yempalla Ramaiah

APPELLANT

Vs

Pallamparthi Krishna Reddy and Others

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, Order 7 Rule 3, 152, 47

Citation : (2007) 1 ALD 367 : (2007) 4 ALT 677

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V. Sudhakar Reddy, for the Appellant; C.V. Nagarjuna Reddy, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Respondents filed a suit seeking a decree of perpetual and mandatory injunctions against the revision petitioner and others, which was decreed in the trial Court and confirmed by the first appellate Court, which became final. Respondents filed the E.P. to enforce the decree of mandatory injunction of removal of a wall passed in their favour and against the revision petitioner. Warrant was returned unexecuted by the bailiff on the ground that the wall which is to be removed as per the decree, was not found. Thereafter, respondents filed a petition u/s 152 C.P.C. in E.A. No. 9 of 2001 seeking amendment of the decree passed in their favour which was opposed on various grounds by the revision petitioner and others. Negating their contention, the executing Court allowed the said E.A. by the order under revision. Hence, this revision.

2. The main contention of the learned Counsel for the revision petitioner is that since the executing Court, which is bound to execute the decree as it, has no power to amend the decree. The contention of the learned Counsel for the respondents is that since the Court that passed the decree and the executing Court are one and the same, in view of the ratio in Tiko (Smt) v. Lachman 1995

(4) SCC 582 and Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, : the executing Court rightly allowed the petition of respondents.

3. For understanding the decree, the judgment can be looked into. So, at my request, the learned Counsel for the respondents produced a certified copy of the judgment of the trial Court in the suit. The operative portion of the judgment reads:

In the result, the suit is decreed as prayed for with costs. Defendants are permitted to remove the ID wall within one month from the date of this judgment. Failure to comply with this judgment, the plaintiff is at liberty to remove the same through process of Court. A reading of the judgment also shows that during the course of trial, a commissioner was appointed and that he drew a sketch showing the topography of the disputed area and filed it into Court along with his report. The nomenclature used to denote the locations in the commissioner's plan is different from the nomenclature used in the plaint plan. Unfortunately the judgment of the trial Court does not state that ID wall referred to in the operative portion of its judgment is the ID wall shown in the sketch prepared by the commissioner. The difficulty during execution proceedings arose because there is no ID wall in the plaint plan. Had the learned trial Judge in the operative portion of the judgment mentioned "ID wall shown in the sketch of the commissioner" there would not have any difficulty. Probably for that reason respondent filed E.A. No. 9 of 2001 seeking amendment of the decree by substituting words "PQ" in place of "ID" because "PQ" in the sketch filed along with the plaint is "ID" in the sketch prepared by the commissioner.

4. In TIKO case (1 supra) relied on by the learned Counsel for respondents it is held:

Technically speaking the executing court could not go beyond the decree and hence the order passed by it is not assailable. But the executing court was also the court which could have amended the plaint and the decree. Counsel for the appellants states that although the decree was passed by Sub-Judge Class III, Sonapat, the very same court later exercised powers as Sub-Judge Class I and was executing the decree. It was, therefore, open to that court to treat the application as an application made before the decretal court and proceed to dispose of the same in accordance with law.

In Pratibha Singh case (2 supra) it is held:

When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected u/s 152 CPC by the court

which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, it would be more appropriate to invoke Section 47 CPC.

5. Even if I follow the ratio in TIKO case (1 supra) and treat the petition as a petition to amend the decree filed on the original side, but not a petition in execution, in as much as the decree as amended, as per the prayer in this petition would not be in agreement with the operative portion of the judgment it may lead to complications. So unless the judgment is corrected no useful purpose would be served in correcting the decree. So the order under revision is set aside. Respondents are at liberty to approach the Court that passed the decree with a petition for making appropriate corrections in the judgment and consequently, in the decree also, to enable him to realize the fruits of the decree obtained by him.

6. Where trial Courts pass decree using nomenclature used in the plaint plan or commissioner plan it is desirable that they mention the plan with reference to which they used the nomenclature and are passing the decree, and should also order that that plan to be attached to the decree, so that the decree passed would become understandable to the executing Court and confusion is avoided.

7. Since the suit is of the year 1984 and since the mistake seems to be that of the Court, the E.P. should be kept pending till the respondents obtain orders on the petition for amendment of judgment and decree to be filed by them.

8. After the respondent files a petition for amendment of the judgment and the decree, the trial Court shall dispose of the same on merits after hearing both sides, as expeditiously as possible, at any rate, within a period of two months from the date of filing of the petition, without being influenced by the observations made in this order.

9. For the aforesaid reasons, the Civil Revision Petition is allowed and the order under revision is set aside and E.A. No. 9 of 2001 on the file of the Court of the Junior Civil Judge, Sullurpet, stands dismissed. No costs.