

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

CIVIL REVISION PETITION No. 856 of 2011

P.C:

This civil revision petition is preferred by the Judgment Debtor (for short 'JD.')->Managing Committee, Jame Masi, B.Saheba, Punjagutta, Hyderabad. It is against the order, dated 28.02.2011, passed in E.P.No.41 of 2009 directing them to deliver vacant possession of the suit premises to respondent No.1- Decree Holder (for short 'DH.'). The E.P. was filed under Rule 141 (2) of the Civil Rules of Practice and Order 21 Rule 11 of the Code of Civil Procedure by the DH for delivery of possession of the suit property in O.S.No.556 of 1983.

2. The DH had instituted O.S.No.556 of 1983 for the following relief:

“It be declared that the plaintiff herein is the absolute owner of the plaint schedule property bearing No.6.3.454 and 455 standing on open piece of land admeasuring 1321.58 square yards equivalent to 1105 sq.mtrs. situate at Punjagutta, Hyderabad within the limits of the Municipal Corporation of Hyderabad and a consequential injunction be granted restraining the defendants herein, their agents, and nominees from interfering with the plaintiff's possession and enjoyment of the plaint schedule property and or **in the alternative:**

It be declared that the plaintiff herein is the absolute owner of the plaint schedule property i.e. house bearing No.6.3.454 and 455 and for recovery of possession.”
(emphasis supplied)

3. One of the issues framed by the trial Court for consideration reads thus:

“Whether the plaintiff is entitled for declaration of his title to the suit property and for the consequential relief of permanent injunction or in the alternative for declaration and possession of the suit property?”

4. O.S.No.556 of 1983, instituted by DH was dismissed by the common judgment, dated 03.03.1993. By this judgment, two other suits bearing O.S.Nos.604 of 1983 and 17 of 1986 were also finally disposed of. In this CRP, we are connected only with O.S.No.556 of 1983. O.S.No.604 of 1983 was filed by one of the tenants of the DH for injunction against some individuals, who, according to the tenant, were disturbing his possession on behalf of the JD.

O.S.No.17 of 1986 was filed by the JD against the DH for permanent injunction. The suit property in all the three suits is one and the same. O.S.No.604 of 1983 was also dismissed by the trial Court along with O.S.No.556 of 1983. O.S.No.17 of 1986 filed by the JD was, however, decreed by the trial Court. The aggrieved parties filed appeals bearing C.C.C.A. Nos. 71 of 1993 and 31 and 51 of 1994. C.C.C.A.No.71 of 1993, arising from the judgment, dismissing O.S.No.556 of 1983, was ultimately allowed and the decree as prayed was granted.

5. In the instant C.R.P., we are concerned only with the E.P. filed in O.S.No.556 of 1983. I am therefore, avoiding further reference to the facts of other two suits and the orders passed therein. At this stage, it is, however, relevant to reproduce the observations made by learned Single Judge of this Court in the

C.C.C.A. No.71 of 1993 in the concluding paragraphs, which read thus:

“Therefore, considering the facts and circumstances of the case, the finding rendered by the trial Court on issue No.1 viz., whether the plaintiff is entitled to declaration of title to the suit schedule property and for consequential relief of permanent injunction or in the alternative for declaration of possession of the suit schedule property has to be accepted. Even though it is sought to be contended that the property is not in possession of the plaintiff and, therefore, injunction cannot be claimed, but, yet, in the earlier case, the Chief Judge, City Civil Court has inspected the premises in question and found that two rooms are in possession of the tenant of the plaintiff. But, in view of the fact that the plaintiff is declared as the title holder of the suit property, he is also entitled for possession of the suit schedule property. Accordingly, the judgment and decree in O.S.No.556 of 1983 is set aside and the suit is decreed as prayed for, for title and consequential permanent injunction in respect of the plaintiff schedule property.”

In view of the finding rendered in C.C.C.A. No. 71 of 1993, the judgment and decree of the lower Court in O.S. No. 17 of 1986 is set aside and the suit is dismissed. O.S. No. 604 of 1983 filed by Saradhi Engineering Corporation is decreed as prayed for.”

(emphasis supplied)

6. Against the common judgment of the learned single Judge, the JD preferred three Letter Patent Appeals in this Court bearing LPA Nos.72 of 2002, 49 of 2003 and 51 of 2003. LPA No.72 of 2002 was against the order passed in an appeal C.C.C.A. No.71 of 1993, arising from O.S.No.556 of 1983. All the LPAs filed by JD were, however, dismissed by the Division Bench of this Court vide judgment and order dated 28.02.2008. Thereafter, the JD carried the matter to the Supreme Court in SLP. The Supreme Court also dismissed the SLP at the threshold on 17.10.2008.

7. In this backdrop, learned Senior Counsel appearing for the JD submitted that the impugned order issuing direction to the JD to deliver possession of the suit schedule property to the DH is patently illegal, since no decree for possession was passed by this Court in C.C.C.A. No. 71 of 1993. He further submitted that there is absolutely nothing in the judgment to indicate that the learned Judge intended to deliver possession of the suit schedule property to the DH and in view thereof, the direction issued by the Court below in the impugned order is wrong and illegal and deserves to be set aside. He further submitted that even the decree drawn is also silent about delivery of possession and that it is consistent with the judgment in C.C.C.A.No.71 of 1993. He did not urge any other contention.

8. At the outset, the submission of learned Senior Counsel for the petitioner that there is no decree for possession passed by this Court in C.C.C.A.No.71 of 1993 arising from O.S.No.556 of 1983 deserves to be rejected outright. From perusal of the concluding paragraphs, it is apparent, the learned Judge has clearly held that the plaintiff is entitled for possession of the suit schedule property. There is no operative portion as such in the judgment, dated 28.12.2001, of this Court in C.C.C.A.No.71 of 1993. Therefore, it is not proper to read only few lines such as “accordingly, the judgment and decree in O.S.No.556 of 1983 is set aside and the suit is decreed as prayed for, for title and consequential permanent injunction in respect of the plaint schedule property.” to contend that the learned Judge did not

intend to grant decree of possession. The earlier part of the concluding paragraph, which is also in the nature of operative portion of the judgment, clearly show that the suit was decreed as prayed for with clear indication that the DH is also entitled for possession of the suit schedule property.

9. Merely because the decree prepared by the Registry does not state anything about possession of the suit schedule property, it cannot be stated that the DH is not entitled for possession of the suit schedule property. In other words, merely because there is a defect in the drafting of a decree, it cannot be stated that the decree holder is not entitled for the reliefs/prayers granted by the Court in the judgment, on the basis of which the decree has been drafted by the concerned department.

10. I have perused the order of the learned Single Judge, dated 28.12.2001 in C.C.C.A.No.71 of 1993. As a matter of fact, there is nothing in the judgment to indicate that the learned Judge did not intend to pass a decree in terms of the prayers in the suit and what was intended was to only grant a permanent injunction. There is a clear indication in the judgment that what the learned judge intended was to grant decree in terms of the prayer made in the suit. As observed earlier, in the concluding paragraph which is in the nature of operative portion of the judgment, the learned Judge clearly observed as under:

“But, in view of the fact that the plaintiff is declared as the title holder of the suit property. He is also entitled for possession of the suit schedule property.”

11. In my opinion, learned Senior Counsel appearing for the JD

is not right in submitting that there is absolutely no indication in the judgment that the learned Judge intended to grant decree of possession. In the circumstances, I find absolutely no merit in the contentions urged on behalf of the petitioner and the C.R.P. is accordingly dismissed.

12. At this stage, learned Senior Counsel appearing for the JD seeks six weeks time i.e. till 10.04.2015 so as to enable the petitioner to carry this order to the Supreme Court. Learned counsel for the DH, though opposed the prayer, left it to the Court. Hence, I pass the following Order:

“The DH shall not take the possession till 10.04.2015. It is made clear that this Court shall not extend the time to deliver possession of the suit schedule property.”

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

Dt:27.02.2015

kdl/sur

