

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 7559 of 2017

ORDER:

1) Aggrieved by the order, dated 14.11.2017, passed in E.A.No.104 of 2016 in E.P.No.34 of 2011 in O.S.No.576 of 1985 on the file of the I Additional Junior Civil Judge, Rajamahendravaram, wherein the application filed under Section 47 of C.P.C. to declare the decree dated 21.12.2001 passed by the I Additional Junior Civil Judge's Court, Rajahmundry in O.S.No.576 of 1985 as modified by decree dated 20.10.2009 in A.S.No.20 of 2002 on the file of the V Additional District Judge, Rajahmundry and decree dated 12.03.2010 of the High Court of Judicature, Hyderabad in Second Appeal No.6 of 2010 is in-executable, and void for want of material particulars, was dismissed, the present Civil Revision Petition came to be filed under Section 115 of C.P.C.

2) For the sake of convenience, the parties hereinafter be referred to as arrayed in the suit.

3) The facts in issue are as under:

Respondent Nos. 1 to 6 herein filed a suit seeking mandatory injunction for removal of soil on the joint lane shown as PQRS in the plaint schedule and also for removal of fencing along the lane corresponding to PS of plaint schedule plan. Vide judgment, dated 21.12.2001, the learned I Additional Junior Civil Judge, Rajahmundry, decreed the said suit, directing the defendants to remove the heap of soil in the joint lane shown as PQRS in the

plaint schedule and they are further directed to remove the fence along the line "PS" and also to remove the newly constructed wall along with the lane PQRS within three months. The Court also granted permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the joint lane as well as the drainage channel situated therein. Aggrieved by the same, the defendants filed A.S.No.20 of 2002 before the V Additional District Judge (FTC), East Godavari Rajahmundry. By its judgment, dated 20.10.2009, the learned District Judge dismissed the appeal but however declared that PQRS lane is not the joint lane between the parties and that it belonged to the defendants, in which the plaintiffs have the easement any right of passage and the right of discharging the drain water. Challenging the same, the petitioner herein, who is the second defendant in the suit, filed Second Appeal No.6 of 2010 before this Court. On 12.03.2010, this Court dismissed the said second appeal. While things stood thus, the plaintiffs filed E.P.No.34 of 2011 to execute the decree for mandatory injunction through Court Officer, which was ordered. At that stage, the second defendant filed E.A.No.104 of 2016 to declare the decree in O.S.No.576 of 1985 and its consequential proceedings as in-executable and void, for want of material particulars.

4) Plaintiff No.4 filed counter, contending that the application is filed only to protract the execution proceedings. Instead of complying the decree, the second defendant filed the present petition by misusing the process of law. The petitioner is

estopped from raising this plea at the stage of execution of decree.

5) After considering the material available on record, the executing Court dismissed the said petition. Challenging the same, the present Civil Revision Petition came to be filed.

6) Learned counsel for the petitioner mainly submits that the Court below ought to have seen the decree dated 21.12.2001 is in-executable since no measurements and the boundaries of the property are mentioned in the decree, which is sought to be executed. He further submits that except mentioning the property marked as PQRS in the map attached to the plaint, the decree holder did not specify the boundaries or measurements of the property which makes the decree in-executable.

7) On the other hand, learned counsel appearing for the respondents would contend that the question of identifying the property in dispute after 31 years cannot be entertained. It is his plea that out of five judgment debtors, only one judgment debtor is taking this objection, which itself shows the intention with which the said E.A. is filed. He further submits that instead of complying the decree, the judgment debtors are resorting to filing petition to purchase time by misusing the process of law. He also submits that if really the decree was in-executable, the said objection should have been taken at the earliest point of time and their failure to do so estop the petitioner from raising the same at this stage.

8) As seen from the record, respondent Nos.2 to 5 and one Chavvakula Papayamma filed O.S No.576 of 1985 seeking a decree of mandatory injunction for removal of soil on the joint lane shown as PQRS in the plaint and also for removal of a fence along the lane corresponding to PS of plaint plan. A decree came to be passed for removal of heap of soil in joint lane shown as PQRS in the plaint plan and the fence along lane corresponding to PS and wall along PQRS. A perusal of the record further show that for the first time, the judgment debtors realised that the property corresponding to PQRS requires to be localised for execution of the decree and as no measurements and boundaries are given, the decree itself is in-executable. The same came to be opposed by the decree holders contending that filing of such an application at the belated stage without raising objection for 31 years itself is sufficient to throw out the petition.

9) As seen from the record, E.P.No.34 of 2011 came to be filed seeking to remove heap of soil in the lane shown as PQRS, fence along with lane PS, wall along with the lane PS and the wall constructed along the lane PQRS shown in the schedule. Ultimately after five years E.P. was allowed. One of the main pleas advanced by the learned counsel for the petitioners that it would be just and proper if the trial Court is directed to enquire for identification of the property. He placed reliance on the

judgment of this Court in *Pratibha Singh and another v. Shanti Devi Prasad and another*¹.

10) It is to be noted here that such a plea as to the identification of the property was never raised by the judgment debtors at any point of time and such a plea was not taken before the trial Court or even in the E.P. Dispute with regard to location, extents and measurements, on ground of PQRS property was not noted in the decree passed by the Court during the long pendency of the litigation for 31 years. That being the position it is not open to the judgment debtors to agitate the matter afresh. It is not in dispute that the executing Court can allow the objections under Section 47 of the Code to the executability of the decree, if it is found that the same is void ab-initio and nullity, apart from the decree being not capable of execution under law either because the same was obtained in ignorance of such provision of law or the law as promulgated after passing the decree. It is well established principles of law that the executing Court cannot go beyond the decree except when the decree is in nullity or without jurisdiction. None of the circumstances to show that the Court can go beyond the decree are made out in the instant case. As stated earlier for 31 years no objection was raised with regard to identification of the property in dispute. Even in E.P. no such plea was taken. Only in the present E.A., which is filed in the year 2016 such a plea is taken. It appears that the same is done only

¹ AIR 2003 SC 643

to drag on the litigation. Having regard to the above, I feel that the order under challenge warrants no interference.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.03.2018
gkv

