

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

CIVIL REVISION PETITION No.6609 of 2017

ORDER:

Challenge in this Civil Revision Petition is the order rendered by the Court of I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in E.A.No.38 of 2017 in E.P.No.17 of 2008 in O.S.No.696 of 1996 dated 13.11.2017.

2. Heard the submission of the learned counsel for the revision petitioner as well as the learned counsel for the respondents. Also gone through the contents of the written submission made on behalf of the revision petitioner. Perused the contents of the decisions that are relied upon by both the learned counsel.

3. A perusal of entire material that is brought on record reveals the following case facts:

- (i) Respondent Nos.1 and 2 herein filed a suit in O.S.No.696 of 1996 that stood pending on the file of the Court of I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar against the revision petitioner for specific performance of

agreement of sale dated 22.11.1995 in respect of the land, in Survey No.283 of Ankushapur Village, Ghatkesar Mandal, Ranga Reddy District, admeasuring Acs.4.29 guntas.

- (ii) The said suit was decreed on 31.3.2003. The revision petitioner, who is the defendant to the said suit, was directed to execute a sale deed in favour of the respondents/plaintiffs/decreeholders in respect of the suit schedule property after receiving the balance of sale consideration.
- (iii) The respondents/plaintiffs/decreeholders filed an Execution Petition *vide* E.P.No.17 of 2008 seeking the Court to direct the revision petitioner/defendant/judgment-debtor to execute a registered sale deed in their favour in respect of the suit schedule property.
- (iv) In the light of failure of the revision petitioner/defendant/judgment-debtor to execute the sale deed, the Court below executed the

registered sale deed in favour of the respondents/plaintiffs/decreed-holders.

(v) The respondents/decreed-holders moved an application *vide* E.A.No.38 of 2017 under Order XXI Rule 32(5) CPC, Order XXI Rule 35 CPC and Section 144 CPC seeking for delivery of possession of the E.P. schedule property. The Executing Court through orders dated 13.11.2017 allowed the said application. It ordered delivery of possession of the E.P. schedule property by dismantling the illegal structures raised by the revision petitioner/judgment-debtor.

4. Aggrieved by the said order passed in E.A.No.38 of 2017, the judgment-debtor is before this Court.

5. Arguing at length in respect of the merits of the case, the learned counsel for the revision petitioner/judgment-debtor contended that the Executing Court is not expected to and should not go beyond the contents of the decree and the decree is passed only for execution of sale deed and thus, entertaining a separate application for delivery of

possession is illegal. The learned counsel further submitted that the version of the respondents/decreed-holders, who are the plaintiffs to the suit, is that they were in possession of the property from the inception of the suit itself and if that being the situation, the question of delivery of possession of the same property does not at all arise and that, filing an application for delivery of possession itself falsifies the version of the respondents/decreed-holders that they were in possession of the property, but without considering all these aspects, the Executing Court simply entertained the said application and granted the relief of delivery of possession which is against the established principles of law and therefore, the revision petitioner is before this Court. Learned counsel further submitted that Order XXI Rule 32(5) CPC or Order XXI Rule 35 CPC or Section 144 CPC does not permit for delivery of possession of the suit schedule property in an execution application when the said relief was not sought for in the suit, but this aspect was not taken note by the Court below.

6. Vehemently opposing the aforesaid contention, the learned counsel for the respondents stated that the revision

petitioner, who was the defendant to the suit, participated in the suit proceedings and contested the suit, but finally considering the genuineness in the case of the respondents/decree-holders, the suit was decreed in their favour. Learned counsel further stated that the respondents/ decree-holders were in possession of the suit schedule property by the date of inception of the suit. Delivery of possession of the disputed property by the revision petitioner/defendant to the respondents/plaintiffs is indicated in the agreement of sale itself and the possession thus continued till the disposal of the suit and thereafter, during the course of execution proceedings, the E.P. bundle was got misplaced and though the Executing Court passed several orders directing the staff concerned to trace out the bundle, the same could not be traced and there was something fishy in misplacement of the bundle. Learned counsel further contended that as the EP bundle could not be traced for a long time, the respondents/decree-holders lodged a complaint before the Principal District Judge concerned, who in turn took steps and ordered for reconstruction of the bundle and

accordingly, the bundle was reconstructed. Thereafter, the Court below executed a registered sale deed in favour of the respondents/decree-holders and subsequently, the respondents/decree-holders who became the absolute owners of the E.P. schedule property visited the suit schedule property and to their surprise, they found some illegal structures present therein and therefore, immediately they moved an application for delivery of possession by dismantling the illegal structures raised by the revision petitioner/judgment-debtor. Learned counsel further contended that on noticing the illegal activities of the revision petitioner, the respondents/decree-holders also lodged a police complaint. Learned counsel further submitted that neither the decree of the Court nor the sale deed executed by the Court was honoured by the revision petitioner and with an intention to defeat the proceedings of the Court, he raised illegal structures and if things like this are permitted to happen and continue, there would not be any sanctity to the Court proceedings and the orders of the Court and that, having considered all these factors, the Executing Court passed orders for dismantling the illegal

structures raised by the revision petitioner/judgment-debtor and for delivery of possession of the suit schedule property to the respondents/decreed-holders and hence, the order under challenge is wholly justifiable.

7. The contention of the revision petitioner is that neither Order XXI CPC, more particularly Order XXI Rule 32(5) CPC or Order XXI Rule 35 CPC, nor Section 144 CPC permits the Executing Court to go beyond the decree and order for delivery of possession and therefore, the Executing Court ought not to have exceeded its limits. His specific submission in this regard is that when the plaintiffs to the suit have not sought for delivery of possession as one of the reliefs in the suit, such a relief should not be granted in the execution proceedings.

8. Order XXI Rule 32 CPC deals with the execution of a decree for specific performance of a contract, or for restitution of conjugal rights, or for an injunction.

Order XXI Rule 32(5) CPC reads as follows:-

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to

all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Order XXI Rule 35 CPC deals with execution of decree for immovable property. The said provision reads as under:-

35. Decree for immovable property.-

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming the beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building on enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

9. Thus, the above provisions make it abundantly clear that delivery of possession of property shall be ordered in favour of the party in whose favour it has been adjudged.

10. Admittedly, in the case on hand, the decree passed does not order for delivery of possession of the suit schedule property.

11. Coming to Section 144 CPC, it deals with restitution where and insofar as the decree or an order is varied or reversed in an appeal, revision or other proceedings. The said provision reads as under:-

Application for restitution.

(1)Where and in so far as a decree or an order is varied or reversed in any appeal, revision or

other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation.--For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,

- (a) where the decree or order has been varied or reversed in exercise of appellate or revision jurisdiction, the Court of first instance;
- (b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order.
- (c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of

making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

12. As rightly put forth by the learned counsel for the revision petitioner, there is no decree in favour of the respondents for delivery of possession of the suit schedule property. Likewise, the above provisions does not directly help the respondents/decree-holders to get delivery of possession of the suit schedule property in an Execution Petition. The version of the respondents/decree-holders is that they were in possession of the suit schedule property by the date of inception of the suit itself and continued to be in possession till the date of decree and thereafter also. But, during the course of execution proceedings, the revision petitioner/judgment-debtor raised illegal structures therein and thus, they lost possession to some extent of the property and therefore, for delivery of possession of the suit schedule property, they filed an Execution Petition.

13. The agreement of sale dated 22.11.1995, which formed basis for the Court below to decree the suit in favour of the respondents/decree-holders, contains a mention that the revision petitioner/vendor had delivered the possession of the property to the respondents/vendees on the date of the said agreement of sale itself. Therefore, as rightly contended by the learned counsel for the respondents/decree-holders there would have been no requirement for the respondents/decree-holders to file a suit claiming delivery of possession of the suit schedule property as one of the reliefs. It is not in dispute that when the revision petitioner/judgment-debtor failed to execute a sale deed in favour of the respondents/decree-holders as ordered by the Court below, the Court below executed the registered sale deed in favour of the respondents/decree-holders. The said sale deed dated 02.5.2017 contains a mention that the revision petitioner/judgment-debtor had already delivered the vacant and physical possession of the suit schedule property to the respondents/decree-holders at the time of agreement of sale dated 22.11.1995. The fact that during the course of execution proceedings, the bundle

in E.P.No.17 of 2008 went missing and that, later the Principal District Judge, Ranga Reddy District gave proceedings for reconstruction of the missing bundle is also evident by the material brought on record. The Principal District Judge, Ranga Reddy District through orders in Dis.No.6652/2015 dated 13.8.2015 permitted the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar to reconstruct the missing bundle in E.P.No.17 of 2008 that stood pending on the file of the said Court.

14. Thus, in the light of the above factual scenario, it has to be seen whether the relief sought for before the Executing Court is justifiable or that the order rendered by the Executing Court directing delivery of possession of the property to the respondents/decreed-holders by dismantling the structures raised by the revision petitioner/judgment-debtor is liable to be set aside on the ground that the provisions quoted does not squarely attract for granting such a relief.

15. Making a submission that the Courts are empowered to grant the relief of delivery of possession in the execution

proceedings though such a relief is not sought for in the suit, the learned counsel for the respondents/decreeholders relied upon the decision of the Hon'ble Apex Court in the case between **Rajinder Kumar Vs. Kuldeep Singh and others**¹, wherein the Court at paras 30 and 31 of the order observed as follows:-

“30. It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree.

31. In *Hungerford Investment Trust Ltd. v. Haridas Mundhra* (1972) 3 SCC 684 it has been held that:

“22. *It is settled by a long course of decisions of the Indian High Courts that the court which passes a decree for specific performance retains control over the decree even after the decree has been passed.*

In *Mahommadalli Sahib v. Abdul Khadir Sahib* (1930) 32 LW 347: (1930) 59 MLJ 351] it was held that the Court which passes a decree for specific performance has the power to extend the time fixed in the decree for the reason that Court retains control over the decree, that the contract between the parties is not extinguished by the passing of a decree for specific performance and

¹ (2014) 15 SCC 529

that the contract subsists notwithstanding the passing of the decree.”

16. In the same decision, the Hon’ble Apex Court at para 36 of the order also held as under:-

“Section 28 of the Specific Relief Act provides that the court has to pass an order as the justice of the case may require. Justice is not an abstract proposition. It is a concrete reality. The parties on approaching the court must get the feeling that justice has been done in the facts and circumstances of the case, particularly in specific performance related cases, in terms of equity, equality and fairness.”

17. On the same aspect, the learned counsel for the respondents further relied upon the decision of the High Court of Bombay in the case between **Baliram Vs. Raghunath**², wherein the Court at para 6 of the order held as under:-

“It is trite that once the Court grants a relief of specific performance, the decree would encompass, within itself, the relief of possession, even if the same is not specifically so stated, otherwise the decree itself would become otiose in as much as the decree-holder may have the title

² 2020 SCC Online Bom 2013

due to the execution and registration of the sale of the suit property in his favour, but would not be entitled to possession. In such a case, the decree, would merely be a paper decree without any factual relief coming to the decree-holder. Such a situation, is not permissible in law. Though, section 22 of the Specific Relief Act, 1963 contemplates to correct this anomaly, in case it occurs, however section 22 of the Specific Relief Act, 1963 can always be said to be an ancillary provision, enacted for the purpose of giving full effect to the decree for specific performance. In any case section 22 of the Specific Relief Act, 1963 cannot be held to have an effect of denying the relief of possession in case its dictum is not followed. That surely cannot be the intention of the legislature, as the legislature does not enact contradictory laws. The provisions of section 22 of the Specific Relief Act, 1963, thus cannot be interpreted to have created a bar for the grant of possession, in case the decree does not provide for the same, the position is rather to the contrary.”

18. Though the learned counsel for the revision petitioner quoted and relied upon the decision of the Hon’ble Apex Court in the case between **Adcon Electronics Pvt Ltd Vs. Daulat and another**³, the factual scenario and the facts of the said case are clearly distinguishable and does not apply

³ (2001) 7 SCC 698

to the factual scenario of the present case. Same is the position with regard to the other decision i.e., the decision of the High Court of Madras in the case between **Vasantha Vs. Manickam @ Thandapani** ⁴.

19. In the case on hand, the respondents contended that they were in possession of the suit schedule property by the date of inception of the suit. As earlier discussed, the agreement of sale which formed basis for the respondents/plaintiffs to file a suit contains a clause that the revision petitioner had handed over the possession of the property to the respondents on the date of agreement of sale itself. Therefore, it cannot be expected that the respondents/plaintiffs/decreed-holders ought to have filed suit for recovery of possession. Likewise, there is a mention in the sale deed that was executed by the Court that possession was delivered by the revision petitioner to the respondents/decreed-holders on the date of agreement of sale itself. The contention of the respondents is that when the E.P. bundle was got misplaced, at that time, the revision petitioner made illegal constructions in the suit

⁴ 2017 SCC OnLine Mad 14419

schedule property and the said structures were noticed by them subsequently. The flow of events strengthens the genuineness in the said version of the respondents/decreeholders.

20. The legal position regarding specific performance of contracts is well settled. One of the well established principles of law is that the Court neither loses its jurisdiction after grant of decree for specific performance nor it becomes *functus officio*. Admittedly, if an ancillary or incidental relief is not granted, there would be no value to the decree of the Court which was passed in the suit. Likewise, the sale deed executed by the Court would also loses its significance. In circumstances like this, to protect its own orders and to give them sanctity, the civil Courts are well empowered to grant such incidental or ancillary reliefs which would ultimately give sanctity to the decrees and orders passed by them. By raising illegal structures in the suit schedule property, the decree passed for specific performance cannot get frustrated. To make the decree and the sale deed effective, the Executing Court ordered for removal of the illegal structures that were made during the

pendency of the execution proceedings. This Court does not find any infirmity in the decision taken by the Executing Court. Thus, having discussed the legal position and the merits of the case, this Court is of the view that the order rendered by the Court of I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in E.A.No.38 of 2017 in E.P.No.17 of 2008 in O.S.No.696 of 1996 dated 13.11.2017, ordering delivery of possession of the E.P. schedule property to the respondents/decreed-holders by dismantling the illegal structures raised by the revision petitioner/judgment-debtor, is wholly justifiable. Therefore, this Court ultimately holds that this Revision Petition lacks merits.

21. Resultantly, the Civil Revision Petition is dismissed without costs. Interim stay granted by this Court on 24.11.2017 stands vacated.

22. As a sequel, miscellaneous applications pending, if any, stands closed.

Dr. CHILLAKUR SUMALATHA, J

20.6.2022

Note:

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