

*** HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**

+ Civil Revision Petition No.788 of 2015

%11.10.2022

#Kattula China Krishna Murthy @
Nallaiah, s/o.Musalaiah, aged 58
years, Occ:Agriculture, R/o.Tadiplarru
village, Tanuku Mandal, West Godavari
District.

.....Petitioner/Respondent/JDr

And:

\$1. Pinepe Yesupadam (died)

2. Pinepe Raju, s/o.Yesupadam, aged
45 years, Occ:Pastor, R/o.Near
Ambedkar Statue, Velivenu
village, Undrajavaram mandal,
West Godavari District.

....Respondents/Petitioners/DHr

3. Kattula Jaya Rao, s/o.Suraiah,
aged 55 years, Occ:Cultivation,
R/o.Tadiparru village, West
Godavari District

4. Kattula Narsimha Murthy,
s/o.Venkanna, aged 45 years,
Occ:Cultivation, R/o.Tadiparru
village, West Godavari District.

5. Rapaka Narasimha Murthy @
Elisha, s/o.Venkanna, aged 60
years, Occ:Cultivation,
R/o.Tadiparru village, West
Godavari District.

6. Vakalapadi Srinivasa Rao,
s/o.Seshaiah, aged 40 years,
Occ:Cultivation, R/o.Tadiparru
village, West Godavari District.

...Respondents/Respondents/DHrs

(Respondents 3 to 6 are not necessary parties to the CRP)

!Counsel for the petitioner : Sri P.S.P.Suresh Kumar

^Counsel for respondent No.2 : Sri S.Syamsunder Rao

^Counsel for other respondents : --

<Gist:

>Head Note:

? Cases referred:

1. 2018 SCC OnLine Del 13005.
2. 2022 Livelaw (SC) 533
3. Supreme Court Civil Appeal Nos.1659-1660/2021 order dated 22.04.2021

HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**Civil Revision Petition No.788 of 2015****ORDER:**

This Civil Revision Petition is filed by the petitioner/JDr No.1 under Article 227 of Constitution of India against the orders passed by the learned I Additional Junior Civil Judge, Tanuku, in E.A.No.589 of 2008 in E.P.No.218 of 2008 in O.S.No.300 of 1998 wherein and whereby the executing Court allowed the petition filed by the petitioner under Section 151 of CPC seeking police aid for the execution of decree of mandatory injunction.

2. The case of the respondent/DHr No.2 before executing Court in brief is that:

Trial Court passed decree of mandatory injunction in their favour as per the plan appended to the decree and then they filed execution petition under Order XXI Rule 35 of C.P.C for delivery of execution petition schedule property. He submits that Court Ameen came to execution petition schedule property along with plaint plan met him on 19.10.2008 at execution petition schedule property situated in Thadiparru village for delivery of the property for which the 1stJDr i.e., petitioner herein came and attacked them and obstructed for the delivery of property as per the decree. It is the contention of the respondent/DHr No.2 that though

appeal is pending, no stay is granted due to that for implementation of orders of the Court police aid is required. He prays to direct Station House Officer, Undrajuvaram police to provide police aid in implementation of decree and also at the time of handing over the property to them.

3. The revision petitioner/R.1 filed counter denying the averments in the affidavit of the respondent before trial Court. It is the contention of the revision petitioner that there is no direction in the decree for delivery of property to the respondent/DHr No.2 and they preferred A.S.No.5 of 2008 on the file of Senior Civil Judge, Tanuku against the Judgment and decree passed by trial Court, which is pending wherein they also filed petition for stay of execution in which the respondent sought time to file counter and recently filed counter, which is coming up for hearing. He submits that execution petition filed under Order XXI Rule 35 C.P.C is not maintainable and petition has to be filed under Order XXI Rule 32 C.P.C and before passing of any order notice has to be issued to them and if any violation of orders of the Court Order XXI Rule 32 C.P.C specifies to attach the property of violator and send him to civil prison but relief claimed by the respondent in execution petition and also in police aid petition are not tenable. He also pleaded about pendency of appeal against the decree and Judgment passed by trial Court and another litigation in respect of same property. He prays to dismiss the petition.

4. Before executing Court the respondent himself examined as PW.1 and also examined another witness as PW.2 and got marked Exs.A.1, A.2 and X.1. On behalf of the revision petitioners, RWs. 1 to 6 were examined and got marked Exs.B.1 to B.5. After hearing both sides court below allowed the petition filed by the respondent and directed Station House Officer concerned to provide assistance for delivery of execution petition schedule property to the respondent/DHr.

5. Aggrieved by the orders passed by learned I Additional Junior Civil Judge, the revision petitioner filed this petition stating that orders passed by the Court below are not sustainable either in law or on facts, which are liable to be set aside. He submits that petition filed under Section 151 C.P.C seeking police aid is not at all maintainable, which is liable to be dismissed as there is no necessity for taking such police aid. It is the contention of the revision petitioner that in a suit for recovery of possession the question of providing police protection or police aid is not maintainable in execution petition stage and Court Ameen, who deposed as PW.2 has stated that he went to serve the Court warrant on 19.10.2008, which also served on JDrs, which shows that there is no resistance on their part and question of providing police aid is not at all necessary. He further submits that execution petition itself is not maintainable since the schedule in the petition is not matching with the

decree and Court below failed to appreciate the fact that RW.6 is Process Server of the Court who clearly stated real facts. He prays to allow the revision petition and dismiss the petition filed by the respondent seeking police aid.

6. I have heard both sides.

7. Learned counsel for the revision petitioner would submit that there is no schedule either in the plaint or in the decree as showing specific schedule of the property is mandatory as per Order VII Rule 3 of C.P.C. He would further submit that as per Order XX Rule 9 C.P.C decree for recovery of immovable property, which shall contain a schedule with boundaries to identify the property but in the present case, no schedule is shown in the decree due to that execution petition itself is not maintainable. He relied on ratio laid down by High Court of Delhi in **Mr.Satish Kumar Jain..Petitioner Versus Veena Jain @ Sheelu Jain and others..Respondents**, 2018 SCC Online Del 13005 wherein it is held that as per Order XX Rule 9 C.P.C when the suit for recovery of immovable property, it must mention description of such property in the decree and as per Order XX Rule 9 C.P.C decree shall bear the date on which Judgment has been pronounced. It is also held that errors on the part of Judicial Forums only encourage frivolous litigants, which causes delays and remanded the case to executing Court to correct the decree

and decide application filed under Section 152 C.P.C afresh. It is also the contention of learned counsel for revision petitioner that second appeal is pending against Judgment and decree passed by trial Court and appellate Court and providing police aid when there is no schedule in the decree certainly causes prejudice to the contention of revision petitioner. He prays to allow the revision petition.

8. Learned counsel for the respondent would submit that revision petitioner not disputed identify of the property either in the counter or in his evidence as RW.1 before trial Court. He further submits that plaint is filed along with neat copy of plan, which clearly shows the plaint schedule property due to that simply because plaint not contains the schedule is not a fatal to the case of the respondent/DHr. He would further submits that copy of decree clearly shows that copy of plaint plan is enclosed due to that Court Field Assistant identified the property to deliver the same to the respondent, which obstructed by revision petitioner and his family members which proved by the respondent by filing Exs.A.1, A.2 and X.1. It is also the contention of learned counsel for the respondent that evidence of PW.2 Process Server support the contention of the respondent, which clearly shows that revision petitioner and his family members are obstructing execution of the decree due to that Court below rightly granted police aid. He prays to dismiss the revision petition.

9. Now, the issue that emerges for consideration by this Court is:

"Whether the orders under challenge are sustainable, tenable and whether the same warrants any interference of this Court under Article 227 of Constitution of India?"

POINT:

10. Before going to the merits of the case, it would be beneficial to quote Order XXI Rules 32 and 35 CPC, which reads as under:-

"Rule 32 Order XXI of Code of Civil Procedure 1908 "Decree for specific performance for restitution of conjugal rights, or for an injunction"

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced 18[in the case of a decree for the restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and

detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 11[six months] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such pro be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 11[six months] from the date of the attachment, no application to have the property-sold has been made, or if made has been refused, the attachment shall cease.

(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.

(Explanation :- For the removal of doubts, it is hereby declared that the expression the act required to be done covers prohibitory as well as mandatory injunctions.)”

11. "Rule 35 Order XXI of Code of Civil Procedure 1908 "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 be entitled 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 by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or 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 an owner 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."

12. It is not in dispute that trial Court passed decree of mandatory injunction, which reads as under:-

i) that the suit be and the same is hereby decreed.

ii) that the defendants do hereby directed to put the plaintiffs in original possession of the plaint property by granting a decree of mandatory injunction;

iii)that the defendants do hereby restrained by way of permanent injunction, interfering with the peaceful possession and enjoyment of the plaint schedule property by the plaintiff;

iv)that the defendants do pay to the plaintiff a sum of Rs.1436/- towards costs of the suit and do bear their own costs of Rs.504/-".

13. It appears that revision petitioner challenged Judgment and decree passed by trial Court by filing appeal suit and they could not succeed and thereafter they said to be filed second appeal before this Court, which is said to be pending but no stay orders filed by revision petitioner either before executing Court or before this Court to show that execution of decree has been stayed.

14. Now it would also beneficial to quote Order VII Rule 3 of C.P.C and Order XX Rule 9 of C.P.C, which reads as under:-

"Rule 3 Order VII of Code of Civil Procedure 1908 "Where the subject-matter of the suit is immovable property"

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

15. **Rule 9 Order XX of Code of Civil Procedure 1908 "Decree for recovery of immovable property:-**

Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and, where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.”

16. On perusal of above referred provision, which makes it clear that if subject matter of the suit is immovable property, the plaint schedule contain description of the property for the purpose of identification with reference to the boundaries or numbers if any. As per Order XX Rule 9 C.P.C, which also shows that when subject matter of the suit is immovable property, the decree shall contain a description of such property to identify the same with reference to the boundaries if any.

17. The Hon’ble Apex Court in **Levaku Pedda Reddamma and Others Versus Gottumukkala Venkata Subbamma and another** in Civil Appeal No.4096 of 2022 order dated 17.05.2022, 2022 Live Law (SC) 533 wherein while considering the procedural laws held that “we find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice. It is well settled that rules of procedure are hand maid of justice and, therefore, even if there is some

delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.”

18. The Hon’ble Apex Court while disposing of civil appeal against the orders passed in a petition filed under Order VII Rule 14 C.P.C held that the rules of procedure are hand maid of justice, it shall not come in way to do substantial justice to the litigant.

19. The Hon’ble Apex Court in **Rahul S Shah..Appellant Vs Jinendra Kumar Gandhi and others..Respondent** in civil appeal Nos.1659-1660/2021 order dated 22.04.2021 gave direction to the all subordinate Courts dealing with suit for recovery of immovable property and also directed the executing Courts to dispose of execution petitions within six months and directed to allow adducing the evidence during the execution proceedings only in exceptional and rare cases. The directions of Hon’ble Apex Court are reads as under:-

“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third

2. Party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents,

upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

4. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

5. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

6. The Court must, before passing the decree, pertaining to

7. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

8. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases

during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

10. The Court exercising jurisdiction under [Section 47](#) or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with [Section 35A](#).

13. Under section 60 of CPC the term "...in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which

may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”

20. The High Court of Delhi in **Satish Kumar Jain... Petitioner Vs Veena Jain @ Sheelu Jain and others...Respondents** case relied on learned counsel for the revision petitioner also discussed ratio laid down by appellate Court in **Ravinder Kaur versus Ashok Kumar**, (2003) 8 SCC 289 wherein it is observed that Court of law should be careful enough to see through such diabolical plans of the Judgment debtors to deny the decree holders the fruits of the decree obtained by them.

21. Coming to the facts of the present case, it is not in dispute that the respondent obtained decree of mandatory injunction against the revision petitioner and decree passed by trial Court shows that revision petitioners

are directed to put the respondents in original possession of plaint plan property (emphasis supplied) by granting a decree of mandatory injunction and also granted permanent injunction against the revision petitioner. The copy of decree also shows that plan is enclosed along with decree which having every details including the boundaries and showing property of revision petitioner and his relatives on eastern side and northern side and also construction made in the site, which is specifically mentioned in the plaint and also in the cause of action portion. It is not the evidence of PW.2 or RW.6 Court Officers that property shown in the warrant is not identifiable. It is also pertinent to note that revision petitioner either in the suit or in his counter filed in execution petition or in his evidence as RW.1 disputed identify of the property. It is not a specific contention of the revision petitioner that the property shown in the plan attached to the decree is not that of the property shown in execution petition schedule. On perusal of the property shown in execution petition schedule, which reads as under:-

“West Godavari District. Undrajavaram mandal, Tanuku Sub-Registrar’s office limits Tadiparru village, D.No.5-21/3, Two buildings i.e., church building another residential building.

East: Kattula Krishna Murthy’s property

West: Panchayat Road

North: KattulaGangaraju Narasimha Murthy and others property

South: Fields.

Bounded within the above boundaries, Ac.0.04 cents R.C.C.Church and RCC building and the open space adjacent to it along with coconut trees, handpump, shed etc., with doors, entrances, electrical service connection No.121 along with all other articles therein. Attached along with the decree.”

22. On perusal of boundaries shown in the execution petition schedule when it is compared with the copy of plan attached to the decree, which clearly tallies with each other and property can easily be identifiable to execute the decree passed by the trial Court. The contention raised by the revision petitioner that D.No. is not mentioned in the schedule of the plaint and also in decree as mentioned in execution petition due to that decree is not tenable cannot be accepted as the purpose of Order VII Rule 3 is to identify the immovable property basing on descriptions given due to that simply because specific schedule is not mentioned in the plaint when plan is attached to the plaint which is filed by the learned counsel for the respondent/DHr and property can easily be identified with reference to the plan attached to the plaint, it cannot be said that respondent/DHr failed to follow provisions of order VII Rule 3 C.P.C. Even the trial Court has categorically stated in the decree directing the revision petitioners to put the respondents in original possession of the plaint plan

property and plaint plan is attached to the decree, which is amounts compliance of Order XX Rule 9 C.P.C. The evidence of PW.2 Process Server and also the evidence of RW.6 Field Assistant of the Court, who entrusted with delivery of possession of plaint plan schedule property to the respondent/DHr coupled with Ex.X.1 positive photographs with Compact Disk supports the contention of the respondent/DHr that there was obstruction of delivery of the property to the respondent as per decree. Positive photographs filed by respondent/DHr clearly shows that a lady said to be wife of the revision petitioner holding a sickle in her hand for which she explained that she came directly from agricultural field due to that she was holding a sickle which cannot be accepted. Whereas the evidence of PW2 Process Server clearly shows that when they went to deliver the property, revision petitioner was present and people gathered made hues. The evidence of RW.6 Field Assistant also shows that he requested revision petitioner to open the locks of the church, which was closed for which he refused and he left the premises. He categorically deposed in his cross examination that he identified the execution petition schedule property as per plaint plan annexed to the warrant due to that he returned the warrant without execution with a request that he require police aid and orders to brake open locks. Though execution petition is filed under Order XXI Rule 35 C.P.C by the respondent, which permits brake open locks to put the Decree holder in possession, even order XXI

Rule 32 C.P.C provision 5 also similar to the provisions of Order XXI Rule 35 proviso 3 as Court may in lieu of or in addition to passing order of attachment of property and sending violator to the civil prison can pass any order for execution of the decree passed by the Court. As held by Hon'ble Apex Court in **Levaku Pedda Reddamma and Others** case referred supra rules of procedure are hand maid of justice, which shall not come in way for implementing orders of the Court and even as per Section 151 C.P.C civil Court is empowered to pass orders as may necessary to meet the ends of justice or to prevent abuse of process of the Court. The Hon'ble Apex Court in **Rahul S Shah** case referred supra directed executing Courts can provide police assistance in appropriate cases.

23. In the present case, the evidence of PW.2 and RW.6 Court Officers clearly shows that revision petitioner along with his men obstructed the execution of the decree, which is not yet stayed by any competent court and filing of appeal is not operates as a stay due to that executing Court rightly ordered for execution of the decree and for effective execution of the decree when there is an obstruction on the part of the revision petitioner rightly granted police aid. This Court did not find any illegality and irregularity in the orders passed by executing Court warrants interference of this Court under Article 227of Constitution of India.

24. In the result, the Civil Revision Petition is dismissed with costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed. The interim stay granted if any stands closed.

BANDARU SYAMSUNDER, J

Dt:11.10.2022.

Chb

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HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

C.R.P.No.788 OF 2015

Date: 11.10.2022

Chb