

**\* THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

**+ Civil Revision Petition No.201 OF 2019**

% 01.02.2024

# Between:

K. Radhika

Petitioner

Vs.

Narender Pershad and others

Respondents

! Counsel for Revision Petitioner : Sri Ali Farooque

^ Counsel for Respondents : K.K. Wagheray

<GIST:

> HEAD NOTE:

? Cases referred :

1. 2007 (2) ALD 94
2. 2006 (5) ALD 838
3. AIR 2021 Supreme Court 2161
4. 1990 (2) ALT 487 (S.B.)
5. (2003) 8 Supreme Court Cases 289

**THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI****Civil Revision Petition No.201 OF 2019****ORDER:**

Aggrieved by the order dated 14.09.2018 (hereinafter will be referred as 'impugned order') in E.A.No.39 of 2018 in E.P.No.10 of 2017 in R.C.No.269 of 2011 passed by learned III Additional Rent Controller, City Small Causes Court, Hyderabad, the petitioners/JDRs filed the present Civil Revision Petition.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned III Additional Rent Controller, City Small Causes Court, Hyderabad.

3. The brief facts of the case as can be seen from the record available before this Court are that the respondent/decreed holder filed R.C.No.269 of 2011 on the file of learned III Additional Rent Controller, Hyderabad to evict his tenant by name Gorakhnath but the said tenant was disputing the relationship of landlord and tenant among them. The respondent/decreed holder filed an application under Section 11 (1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act with a prayer to direct the respondent to pay or deposit the arrears of rent from September, 2007 to May, 2011 @ Rs.450/-

per month and the said petition was dismissed. Aggrieved by the same, the respondent/decreed holder filed CRP No.2031 of 2013, wherein the order passed by the learned Rent Controller was set aside and directed the tenant to deposit the arrears of rent. The Respondent/decreed holder obtained eviction order on 29.08.2017 directing the tenant to vacate the petition schedule premises and subsequently E.P.No.10 of 2017 was also filed. In the meanwhile, the tenant died on 15.12.2017 and his legal representatives were brought on record. The legal representatives of said Goraknath (tenant) i.e., the revision petitioners herein have filed Special Leave Petition (Civil) Diary NJos.35813 of 2018 challenging the order dated 03.02.2017 in CRP No.2031 of 2013 and the Honourable Apex Court was pleased to direct the parties to maintain *status quo*. However, the said Special Leave Petition was ultimately dismissed.

4. One of the legal representatives of Goraknath by name K. Radhika filed E.A.No.39 of 2018 in E.P.No.10 of 2017 under Order XXVI Rule 9 and 18-A read with Section 151 of the Code of Civil Procedure to appoint Advocate Commissioner to measure the extent of property in H.No.4-8-8/1 along with the outer boundaries to ascertain whether the extent is 350 square yards as claimed by them or 40.5 square yards as claimed by

the respondent/deed holder. In the said petition it was contended that the EP schedule property does not match to the property in existence in house bearing No.4-8-8/1 nor the boundaries thereto are matching on the ground. It is further contended that the property on ground comprises of 350 square yards covered by the sale deed dated 17.02.1950 and whereas the respondent/deed holder is claiming 40.5 square yards quite in the middle of the property which belongs to them. Thus, the revision petitioners prayed to appoint an Advocate Commissioner to resolve the dispute by ascertaining the property as to whether it is 350 square yards or 40.5 square yards.

5. To the above said petition, the respondent/deed holder filed counter by contending that his father died in the year 1948 and thus, the question of his father executing sale deed in favour of Goraknath on 17.02.1950 does not arise and thereby the said sale deed is false, forged and fabricated. It was further contended that Goraknath has not disputed about the boundaries and the extent of property either in the RC proceedings or EP proceedings and once the tenant has not disputed the boundaries and extent, his legal heirs are not expected to raise such plea independently. It was further

contended that there is an injunction order against the deceased V. Goraknath and his son or any other person claiming through them from interfering or disturbing the possession of the respondent over an extent of 1000 square yards as per orders dated 16.08.2011 in I.A.No.447 of 2011 in O.S.No.1723 of 2011 on the file of learned III Junior Civil Judge, City Civil Court at Hyderabad. Finally the respondent contended that the petitioner to appoint advocate commissioner was filed only to delay and drag the execution of warrant and thus, prayed to dismiss the petition. On considering the rival contentions, the learned III Additional Rent Controller, City Small Causes Court, Hyderabad dismissed the application. Aggrieved by the same, the petitioner/JDRs filed the present Civil Revision Petition to set aside the impugned order.

6. Heard both sides and perused the record including the grounds of revision.

7. The contention of the revision petitioner is that her father filed O.S.No.1035 of 2017 before the learned Chief Judge, City Civil Court at Hyderabad for declaration and possession in respect of disputed land of 40.5 square yards. On the other hand, the respondent contended that there is an injunction order against the deceased V. Goraknath and his son or any

other person claiming through them from interfering or disturbing the possession of the respondent over an extent of 1000 square yards as per orders dated 16.08.2011 in I.A.No.447 of 2011 in O.S.No.1723 of 2011 on the file of learned III Junior Civil Judge, City Civil Court at Hyderabad and that the unregistered sale deed claimed to have been executed by father of the respondent/decreed holder in favour of father of revision petitioner is forged and fabricated. However, it is pertinent to note that the dispute to be resolved in this Civil Revision Petition is whether an Advocate Commissioner can be appointed or not to measure the disputed land.

8. The contention of the revision petitioner is that she filed E.A.No.39 of 2018 seeking appointment of an advocate commissioner to measure the extent of property in H.No.4-8-8/1 since the decreed holder cannot be allowed to obtain possession of entire 350 square yards instead 40.5 square yards and that the petition schedule property in R.C.No.269 of 2011 is not identifiable since it is vague. It is pertinent to note that in the petition before the execution Court it was mentioned that the property on ground comprises of 350 square yards covered by the sale deed dated 17.02.1950 and whereas the respondent/decreed holder is claiming 40.5 square yards quite in

the middle of the property which belongs to them. The father of the revision petitioner disputed the tenant and landlord relationship between himself and decree holder has never raised the dispute of identity of the property. On the other hand, the revision petitioner, who being legal representative of tenant was brought on record, is contending that the premises of 40.5 square yards as claimed by the landlord is in the middle of 350 square yards and it belongs to them.

9. In **Vadlamani Suryanarayana Murthy v. Saripalli Balakameswari by LRs**<sup>1</sup> the High Court for the erstwhile State of Andhra Pradesh observed that if any property other than the one specified in the schedule is sought to be proceeded against, the respondents can certainly put forward their grievance, and it shall always be competent for the executing Court, to adjudicate the same. However, it was further observed that the appointment of a Commissioner, in matters of this nature, would amount to reopening the entire issue, and may even lead to a situation of annulling the decree, as a whole. In **Chakka Ranga Rao v. Molla Mustari Banu**<sup>2</sup>, the High Court for the erstwhile State of Andhra Pradesh observed that if the areas and portions purchased by the respondent and revision

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<sup>1</sup> 2007 (2) ALD 94

<sup>2</sup> 2006 (5) ALD 838

petitioner are identified, localized and demarcated, the area encroached by the revision petitioner into the site belonging to the respondent can easily be known and in such circumstances, it is just and expedient to appoint a Commissioner. In **Rahul S. Shah v. Jinendra Kumar Gandhi and others**<sup>3</sup> the Apex Court observed that 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.

10. The plea taken by the revision petitioner is altogether a new plea, which was not raised by the tenant, who is the father of the revision petitioner either in the RC proceedings or EP proceedings. It is settled law that the legal representatives are not entitled to take inconsistent or contradictory plea on the admitted facts made by the deceased and that the legal representatives are not entitled to take any defence relating to their independent rights. In this regard, learned counsel for the respondent relied upon a decision in **G. Purnachandra Rao and others v. K. Rama Rao**<sup>4</sup> wherein the High Court for the erstwhile State of Andhra Pradesh held as under:

*“Further, when a party dies, his legal representatives are appointed merely in order that the proceedings may be continued*

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<sup>3</sup> AIR 2021 Supreme Court 2161

<sup>4</sup> 1990 (2) ALT 487 (S.B.)

*and a decision arrived at. it is the rights and disabilities of the original party that have to be considered and no those of the legal representatives themselves, except in certain exceptional cases. Therefore, all that the legal representatives can, is to take the proceedings at the stage at which it was left when the original petition died, and to continue it. The legal representatives can only rely on the same cause of action and on the same title as the deceased original landlord. Likewise, the legal representatives are not entitled to take any fresh point which was not raised by the original landlord.”*

11. In **Ravinder Kaur v. Ashok Kumar and another**<sup>5</sup> the Apex Court observed as under:

*“The objection that the High Court referred to in the impugned order raised by the respondent herein was in regard to the correctness of the site plan. This very issue was specifically raised in the original ejection proceedings and was held against the respondents based mainly on the admission of the first respondent. This question of identity of the property was never again raised in the appeal before the appellate authority, in the revision before the revisional authority, namely, the High Court or in the SLP before this Court. In such circumstances, we fail to understand how this very issue can be re-agitated in the execution proceeding by the tenants. The executing court has rightly observed that re-opening of this issue would amount to asking that court to go behind the decree which is impermissible in law.”*

12. It is the contention of the revision petitioner that her father Goraknath purchased premises bearing No.4-8-8/1 admeasuring 350 square yards situated at Putli Bowli, Hyderabad under a registered sale deed dated 17.02.1950 from the father of the respondent No.1/decree holder i.e. late Jaishanker Das and after the death of Goraknath, the revision petitioner is the possessor of the said premises. The decree holder filed R.C.No.269 of 2011 seeking eviction of father of the revision petitioner and described the application schedule property as 40.5 square yards in H.No.4-8-8/1, Putlibowli,

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<sup>5</sup> (2003) 8 Supreme Court Cases 289

Hyderabad to which the father of the revision petitioner filed counter disputing the existence of jural relationship of landlord and tenant and pleading that he is the exclusive owner of the schedule property under the sale deed referred above. But the respondent/decree holder clearly stated that his father passed away in the year 1948 and thus, the execution of sale deed by his father in the year 1950 in favour of father of revision petitioner does not arise. It is to be noted that the said aspect was decided in R.C.No.269 of 2011, which was not challenged either by the revision petitioner or her father and thereafter the respondent/decree holder filed E.P.No.10 of 2017, wherein order was passed on 18.07.2018 against which no appeal was preferred by revision petitioner. Surprisingly, the revision petitioner in a petition filed under Order XXVI Rule 9 of the Code of Civil Procedure has been raising all the above pleas.

13. It is contended by the revision petitioner that the Rent Control Case was not decided on merits and in fact for default in compliance of an order under Section 11 of the Act, an eviction decree was passed. If at all the Rent Control Case was not decided on merits, the revision petitioner ought to have taken necessary steps as per law but there is no such instance in the case on hand.

14. The contention of the respondent is that the Civil Revision Petition is filed to drag on the warrant of delivery of possession apart from suppression of material facts and a fraud that is played on every Court by not only the revision petitioner but also by respondent Nos.2 to 5. Based on the fabricated, forged and unregistered alleged sale deed, the revision petitioner and respondent Nos.3 to 5 jointly filed Special Leave Petition (SLP) No.26472 – 73 of 2018, wherein initial *ex parte* stay was granted on 26.09.2018, however, the SLP No.26472 – 73 of 2018 was dismissed on 03.10.2023 and thereby the alleged sale deed was rejected.

15. It is further contended by the respondent/decree holder that the revision petitioner and his family members i.e., respondent Nos.3 to 5 with *mala fide* intention to mislead the Court, have shown their residence as 4-8-8/1, Putlibowli, Hyderabad, whereas they are all residing at 4-8-71, Putlibowli, Hyderabad, which is evident not only from the factum of receiving notices of caveat on the address at 4-8-71 and also the postal acknowledgments.

16. As per the contention of respondent/decree holder when the eviction orders were sought to be executed, the warrant of

delivery of possession was issued by the Court in execution proceedings on 29.11.2017 and when the Bailiff went to execute the warrant, the tenant created law and order problem and thereby the first warrant was returned unexecuted. On an application by the respondent No.1/decree holder in E.A.No.52 of 2017, police directions were issued for executing the warrant but when the Bailiff along with police aid went to execute the second warrant, the premises was locked and thus, the second warrant was also returned. Thus, the decree holder was constrained to file E.A.No.24 of 2017 but when the Bailiff intended to execute the warrant of delivery of possession before 26.09.2018, the premises was already vacated and a wall was raised at the entrance door, which was also locked. On that the Bailiff after breaking open the lock found that there is no access to the house because of the wall, as such the warrant was returned unexecuted.

17. As contended by the learned counsel for the respondent, the decree holder filed another E.A.No.26 of 2017 seeking to break open the lock to demolish the wall at the entrance and to remove all obstructions and hurdles for entering the E.P. Schedule premises but when the Bailiff went to execute the warrant on 18.12.2017, he was informed that the judgment

debtor expired on 15.12.2017 and thus, the warrant remained unexecuted. In the meanwhile, the Legal Representatives of deceased tenant approached the Honourable Supreme Court and filed SLP No.26472 of 2018 and obtained *status-quo* orders. Throughout the proceedings and at every stage of the warrant that was issued, schedule of property was shown as 40.5 square yards and the same was never objected at any time. However, after dismissal of the SLP No.26472 of 2018, when the Bailiff of the Court went to the petition premises and found that the wall at the entrance is still intact and is in existence, the warrant was returned on 17.10.2023 by specifically mentioning about the high handed behaviour of the revision petitioner. It is the contention of the respondent/deGREE holder that the premises is vacant since 2017 as the wall is in existence even today and none can enter the premises and admittedly the daughters of deceased tenant are all married and are not residing at the petition schedule premises.

18. As seen from the record, the warrant for delivery of possession was unexecuted on several occasions. Though the revision petitioner and others have approached SLP No. No.26472 of 2018, it was dismissed by the Honourable Supreme Court. As discussed above, the Rent Control Case is of the year

2011 and though the decree holder succeeded in the Rent Control Case, until now warrant of delivery of possession could not be executed for the reasons stated above. It appears that that the revision petitioner and respondent Nos.3 to 5 are intending to prolong the proceedings without being in possession of the petition schedule property and adopting all methods by abusing the process of law, thereby trying to delay the execution proceedings and to defeat the legitimate rights of the respondent herein. On one hand, the revision petitioner is disputing the title of the property and on the other hand the revision petitioner is disputing the identity of the property. Thus, the revision petitioner is trying seriously to take each and every possible plea that is available to her to drag the execution proceedings to the possible extent. Thus, viewed from any angle the revision petitioner has not made out any grounds to establish that there is a dire necessity to appoint advocate commissioner to resolve the dispute between the parties.

19. In these circumstances, this Court is of the opinion that the learned Rent Controller has rightly dismissed the petition by giving cogent and justifiable reasons in the impugned order dated 14.09.2018 and thereby this Court do not find any merits in the revision to interfere with the impugned order. It is also to

be seen that appointment of advocate commissioner is a discretionary power of the Court and the Executing Court by exercising its discretionary power observed that warrants earlier issued were not returned on the endorsement by the bailiff that the extent is not tallied or boundaries are not tallied, as such the petition to appoint advocate commissioner is not maintainable. Moreover, the present Civil Revision Petition is filed under Article 227 of the Constitution of India, wherein the scope and ambit of High Court to interfere with the findings of the trial Court is very limited to a supervisory role. As seen from the grounds of revision, the revision petitioner failed to bring out any of the grounds showing that there is an error apparent on the face of the record to set aside the impugned judgment. Therefore, there are no merits in the Civil Revision Petition and thereby it is liable to be dismissed.

20. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

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**JUSTICE M.G.PRIYADARSINI**

Date: 01.02.2024

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