

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.313 OF 2015

ORDER:

This Civil Revision Petition is filed challenging the order in E.P.No.106 of 2012 in O.S.No.560 of 2002 passed on 11.12.2014 by the learned Principal Junior Civil Judge, Khammam.

The case of the petitioners-Decree Holders is that the J.Dr.No.3 obstructed the fencing of the suit schedule property and thereby interfering with the execution proceedings and violated the judgment and decree dated 28.03.2003 in O.S.No.560 of 2002. Learned Principal Junior Civil Judge, Khammam after examining the witnesses produced before the Court i.e., P.Ws. 1 to 3 on behalf of the petitioners and R.W.1 on behalf of the J.Dr.No.3, had dismissed the application filed under Order XXI Rule 32(1) read with 55 of Civil Procedure Code.

Heard the learned counsel for the petitioners and perused the record.

The Court below had elaborately considered the evidence produced on behalf of the petitioners, particularly depositions of P.Ws. 1 to 3. P.W.1 submitted that he sold away the property in the year 2005 and he further deposed that O.S.No.581 of 2012 and O.S.No.53 of 2013 were filed against himself and his family members by the JDrs on the ground that they were interfering with the land of the JDrs. So far as P.W.1 is concerned there is no mention about any interference of the J.Dr.No.3 P.W.2 though deposed that about two years back J.Dr.No.3 and two others came to the site and removed poles and again he planted the poles, there was no supporting material placed before the court to corroborate the same. P.W.2 deposed that though the incident occurred in January, 2013 in between 8.30 a.m. and 9.00 a.m., whereas the suit was filed in the month of April, 2012. P.W.2 also deposed that he has no previous acquaintance with the J.Dr.No.3. Further, there were other

contradictions. So far as P.W.3 is concerned who is an auto mechanic, deposed that he came to the site at 11.30 a.m., whereas according to P.W.2 the alleged incident occurred between 8.30 a.m. and 9.00 a.m. In other words, there is no correlation between the depositions of P.Ws.2 and 3. Taking into consideration of the evidence on behalf of the petitioners-Decree Holders and considering the evidence of JDrs., the Court recorded as under –

“From the above appreciation of evidence adduced by both parties it is clear from petition itself that J.Dr.No.3 tried to stop the work in E.P. Schedule property only. The said act committed by J.Dr.No.3 cannot be termed as violation of decree passed in the suit. It is proved that E.P. ‘C’ Schedule property was already sold away by decree holders 4 to 6 petitioner also failed to file any photos to show fencing around E.P. Schedule property. In the petition the decree holder also sought for costs of the suit only from J.Dr.No.3 who is not alone liable to pay the suit costs on this technical ground the counsel for J.Dr.No.3 has contended that this petition is not maintainable. The evidence of P.Ws.1 to 3 held not sufficient to come to conclusion that J.Dr.No.3 has violated the decree passed in the suit. Further admittedly, the decree was passed on 28.03.2003. After gap of nine years the decree holders came to court alleging that there is interference from J.Dr.No.3. Further by the date of filing suit the JDrs. No.1 and 2 also not alive. But by suppressing this fact the decree holders filed this petition. The decree holders also suppressed the fact of alienation of part of E.P. ‘C’ Schedule property. Thus the decree holders failed to make out their case. Hence, J.Dr-3 is not liable for arrest. Accordingly point is answered.”

In view of the above, the Court having examined the record and having appreciated the evidence, came to categorical conclusion that there is no violation of the order and as such there is no material warranted in directing the arrest of the J.Dr.No.3.

In the light of the above discussion, I am not inclined to interfere with the order of the learned Principal Junior Civil Judge, Khammam, in dismissing E.P.No.106 of 2012 in O.S.No.560 of 2002 as there is no error warranting the interference of this Court.

Accordingly, this Civil Revision Petition is dismissed. However, the

dismissal of the present Civil Revision Petition shall not be construed as preventing the petitioners-Decree Holders to approach the Court seeking relief in accordance with law in future if there is any violation. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated:01.04.2015.

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