

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.4205 of 2014

Between:

Miriyala Nageswara Rao

.....Petitioner

and

Ravulapalli Radha Krishna Murthy and others.

.....Respondents

Date of Judgment pronounced : 18-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.4205 of 2014

ORDER:

Heard Sri Kowturu Vinaya Kumar, learned counsel

for the petitioner and Sri K Raghuvver Reddy, learned counsel for respondents.

2. With the consent of both sides, this Revision Petition is disposed of.

3. Petitioner herein is the defendant in the suit. The respondents filed O.S.No.88 of 2007 before the Senior Civil Judge, Avanigadda for declaration of their title to the plaint schedule property, for recovery of possession and also for consequential permanent injunction. The suit was decreed on 03-06-2011 directing both parties to bear their own costs.

4. Questioning the said decree, the petitioner filed A.S.No.106 of 2013 before the X Additional District Judge, Krishna, at Machilipatnam. The petitioner also filed I.A.No.76 of 2014 seeking stay of execution of decree. By order dt.30-04-2014, the Court below granted stay of execution of decree but while doing so, directed the petitioner to deposit "decree costs of Rs.8398/- on or before 07-05-2014 before the Senior Civil Judge, Avanigadda" observing that if the said costs are not deposited, the stay stands vacated.

5. It appears that the petitioner complied with the said condition, although belatedly and filed an application on 03-06-2014 to extend the time for deposit

by one more month, but the said application was returned by the Court below stating that the stay stood vacated since the order was not complied with by 07-05-2014.

6. Challenging the said docket endorsement, this Revision Petition is filed.

7. Learned counsel for the petitioner contended that when there is no decree awarding costs in favour of the respondents, the X Additional District Judge, Krishna, at Machilipatnam, while granting stay of the execution of the decree in O.S.No.88 of 2007, in I.A.No.76 of 2014, ought not to have imposed the condition of payment of costs as if such costs of Rs.8393/- were awarded in the decree, on or before 07-05-2014 before the Senior Civil Judge, Avanigadda. He further contended that since the date fixed by the said Court had fallen in the summer vacation of the Court, he sought for extending the said time, but the Court below had returned the application on the ground that the stay was vacated in the meantime since the condition of deposit of decree costs, was not complied with.

8. Learned counsel for the respondents did not dispute the fact that in the decree granted in O.S.No.88 of 2007, the Senior Civil Judge, Avanigadda had not granted any costs to the respondents, payable by the petitioner. Therefore, it was not open to the X Additional District Judge, Krishna, at Machilipatnam, to direct the petitioner

to deposit “decree costs of Rs.8393/-” on or before 07-05-2014 before the Senior Civil Judge, Aanigadda and to further direct that if he did not do so, the stay granted by it of proceedings in E.P.No.37 of 2012 would stand vacated.

9. In this view of the matter, the order dt.30-04-2014 in I.A.No.76 of 2013 in A.S.No.106 of 2013 insofar as said Court directed the petitioner to deposit the decree costs of Rs.8393/- on or before 07-05-2014 before the Senior Civil Judge, Avanigadda is set aside and the consequent default clause stating that the stay would stand vacated, if the petitioner fails to deposit decree costs by 07-05-2014 is also set aside. Pending disposal of the appeal A.S.No.106 of 2013, there shall be stay of proceedings in E.P.No.37 of 2012 in O.S.No.88 of 2007 on the file of the Senior Civil Judge, Avanigadda. Since the appeal is of the year 2013, the Court below shall expedite the hearing of the appeal.

10. With the above directions, the Civil Revision Petition is allowed. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-08-2015

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