

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.4733 of 2014

ORDER:

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. The petitioners herein are plaintiffs in O.S.No.125 of 2013 on the file of the Court of the Junior Civil Judge at Kollapur (for short, trial Court). They filed the said suit seeking permanent injunction in respect of various extents of land in different survey numbers in Dedinenipally Village, Peddakothapally Mandal, Mahabubnagar District. Pending the said suit, a temporary injunction was granted and it is in force. While so, the petitioners filed I.A.No.168 of 2014 alleging violation of injunction order and sought a direction to the police to give protection to them to maintain their possession over the suit schedule lands. But, the said application was filed under Order 39 Rule 2(A) of the Code of Civil Procedure. In support of the said petition, the petitioners filed the affidavit stating as follows:

“4. That the respondents/defendants are trying to interfere and dispossess us from the suit lands and obstructed us from interfering into the suit lands and threatening us. The respondents/defendants are intentionally dis-obeying the orders of the Hon’ble Court. As such to comply the order of the Hon’ble Court and to protect our possession over the suit lands, the police Peddakothapally may be directed to give due protection to us, in the interest of justice.”

3. The application of the petitioners was dismissed by the trial Court by order dated 08.10.2012, by observing as follows:

“8. In the said authority, the Hon’ble High Court discussed about order 39 Rule 2-A of Code of Civil Procedure 1908 (herein after referred as C.P.C) and also in respect of Order 21 Rule 37 of C.P.C. In the said authority the Hon’ble High Court has clearly stated that to prove dis-obedience order the test is that, the petitioners has to prove the facts in terms of beyond all reasonable doubt and preponderance of possibilities.

9. In the present case on hand, the suit schedule property is

a land, and if the respondents have caused any damage to the said property, then the petitioners ought to have filed any documentary evidence. If at all if the respondents are only interfering by coming at the suit schedule property the petitioners ought to have led oral evidence on such aspect. In this petition there is neither any documentary evidence or any oral evidence on behalf of petitioners to prove that the respondents have dis-obeyed the injunction order granted by this Court in his favour on 20-1-2014. The petitioners failed to qualify the test laid in the above said authority. Under this circumstance the relief of the petition cannot be granted.”

Challenging the said order, the present Civil Revision Petition is filed.

4. A perusal of the above order shows that the observations of the trial Court are correct since the application was filed under Order 39 Rule 2(A) of the Code. Now the learned counsel for the petitioners says that the application was filed for police protection, but not for violation of the injunction order. The prayer in the petition is different and the provision of law quoted for the relief is different. The trial Court has taken the petition as the petition for violation of the injunction order and dismissed the same. I see no reason to interfere with the impugned order.

5. Hence, the Civil Revision Petition is dismissed. If the petitioners want to seek police protection for implementation of the injunction order already granted, liberty is given to them for filing appropriate application quoting the correct provision of law and the trial Court shall consider and dispose of the same in accordance with law. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 17.12.2015
TJMR