

HON'BLE SRI JUSTICE R. KANTHA RAO

Contempt Case No.888 of 2015

ORDER:

Heard Sri O.Manohar Reddy, learned counsel appearing for the petitioner and Sri V. Jagapathi, learned counsel appearing for the respondent.

2. The petitioner filed a suit in OS No.235 of 2002 for declaration of title and recovery of possession and the same was decreed by the trial court. Feeling aggrieved by the same, the respondent and others filed appeal. In the appeal, initially, this court granted an interim order staying all further proceedings pursuant to the decree passed by the trial court. Thereafter, after hearing either side, this court passed an interim order dated 24.11.2008 in AS MP No.1336 of 2008 in AS No.469 of 2008 restraining the respondent from alienating or changing the nature of the property until further orders. The present contempt case is filed alleging that during subsistence of the interim order, the respondent violated the same by raising constructions in the scheduled property.

3. In response thereto, the respondent filed counter-affidavit *inter-alia* contending that the respondent has not violated the order of this court by making any construction in the schedule property and that the contempt case is filed by the petitioner only to harass the respondent. In reply thereto, the petitioner filed additional-affidavit stating that the respondent has made constructions in spite of the orders of this court, which amounts to wilful and deliberate disobedience of the orders of this court. Thereafter, the respondent filed additional counter-affidavit stating that she has not raised any construction contrary to the interim orders passed by this court. She stated that she has not raised any pillars on the first floor nor laid RCC roof as alleged by the petitioner. It is submitted that the RCC roof of the

house in the first floor was laid during the pendency of the suit and not after filing of the appeal. As one of the walls in the ground floor has fallen down, she got it repaired and the bricks which were left were kept on the first floor and thereafter, she has removed them. She undertook that she shall not use the same for construction of walls in the first floor. She further submitted that she has great respect to the orders of this court and that in fact, she has not violated the orders of this court and only to harass the respondent, the petitioner filed the present contempt case.

4. I have heard the learned counsel appearing on either side and perused the photographs filed by the petitioner in support of his contention. At the outset, as can be seen from the photographs, no significant construction has been raised by the respondent. According to the petitioner, the respondent has raised a pillar and thereafter she also laid a slab in the first floor of the house. The contention of the respondent is that when one of the walls collapsed, she made certain repairs, but she has not raised any constructions and she undertook in the affidavit that she will not raise any new construction in the first floor. To punish the contemnor for violation of the orders passed by this court, there must be convincing and definite evidence against the respondent showing wilful disobedience or violation of the orders passed by this court. As already pointed out, no significant construction has been raised by the respondent. Further, when the alleged pillar was constructed is not known. According to the respondent, it is during the pendency of the suit and not during the pendency of the appeal. Whereas the version of the petitioner is that this pillar was raised after passing of the interim order by this court in AS MP No.1336 of 2008 dated 24.11.2008 in AS No.469 of 2008.

5. From the entire facts and circumstances of the case, I am of the considered view that the petitioner is not able to demonstrate by cogent evidence that the respondent has wilfully disobeyed the orders passed by this court. The version of the respondent that she rendered

some repairs after the wall was collapsed also cannot be ruled out. Therefore, it is not a case to hold the respondent guilty of contempt for violation of the orders passed by this court.

6. In view of the above, the contempt case is dismissed. No order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

R. KANTHA RAO, J

Date: 16.11.2015
BSS

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