

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
CIVIL REVISION PETITION No.4186 of 2015

Date:09.10.2015

Between:

Kanneganti Siva Prasada Rao,
S/o Basavaiah

..... **Petitioner**

And:

Vankayalapati Janaki Ramaiah @ Janakaiah,
S/o Koteswar Rao and another.

.....**Respondents**

Counsel for the Petitioner: Mr. Ghanta Rama Rao
For Mr. Ghanta Sridhar

Counsel for the Respondents: Mr. V.Raghu

The Court made the following:

ORDER:

This Civil Revision Petition arises out of order, dated 28.7.2015, in EA.No.41 of 2013 in E.P.No.69 of 2013 in O.S.No.151 of 1996 on the file of the learned Senior Civil Judge, Sattenapalli.

The petitioner filed the above-mentioned suit and secured decree for specific performance as well as permanent injunction against the respondents. The respondents herein along with some others have filed A.S.No.46 of 2000 before this Court feeling aggrieved by the said decree. Initially, this Court by order, dated 19.01.2000, in CMPNo.486 of 2000 granted suspension of operation of judgment and decree, dated 11.8.1999. However, the said order was modified by order, dated 19.4.2000 in CMP.Nos.486 and 6338 of 200 by making it

clear that the appellants therein shall not, by virtue of the suspension of judgment and decree, be entitled to interfere with the possession of the petitioner with respect of the suit schedule property having regard to the permanent injunction granted by the judgment and decree under appeal. The said order is subsisting as on today and the appeal is pending.

The petitioner has filed E.P.No.69 of 2013 and in the said E.P., he has also filed E.A.No.41 of 2013 for grant of police aid for implementation of permanent injunction order. This application was dismissed by the lower Court by order, dated 28.7.2015, on the ground that the decree for permanent injunction is subject matter of the appeal before this Court and that this Court itself has clarified by order, dated 19.4.2000, that the appellants therein (including the respondents herein) shall not be entitled to interfere with the possession of the petitioner with respect of the suit schedule property and that therefore, the petitioner can only file an appropriate application before this Court, in the event, the respondents have violated the decree for injunction.

Order-XXI Rule-32 of the Code of Civil Procedure envisaged remedies for a decree holder of permanent injunction, in the event of its violation, by seeking detention of the alleged violator in civil prison or by attachment of his property or by both.

Having regard to the specific remedies provided in the Code of Civil Procedure, an application filed for police aid for implementation of order of injunction is not entertainable. The lower Court has lost sight of this legal position and instead of rejecting the application on that ground, it has relegated the petitioner to this Court. Since the E.A. filed by the petitioner should have met the fate of dismissal even on the above-mentioned ground, the dismissal of the said E.A. *albeit* on a different ground by

the lower Court is, therefore, not liable to be interfered with.

As regards the observation of the lower Court that the judgment and decree of the lower Court is under suspension in appeal, a close reading of the order, dated 19.4.2000, in CMP.Nos.486 and 6338 of 2000 reveals that though an unconditional order of suspension of the judgment and decree was granted by this Court in the first instance, the same was modified by making it clear that the respondents shall not by virtue of the suspension of the judgment and decree be entitled to interfere with the possession of the petitioner of the suit schedule property. The observation of this Court, that "having regard to the permanent injunction granted by the judgment and decree under appeal", would undoubtedly indicate that the suspension of judgment and decree of the lower Court is confined only to the decree for specific performance of the suit and the direction to register the sale deed. Hence, in my opinion, the decree for injunction is made operational by order, dated 19.4.2000 and the only way by which the said decree is enforceable is by making an appropriate application under Order-XXI Rule-32 of the Code of Civil Procedure before the lower Court.

In this view of the matter, the petitioner is permitted to file an appropriate application before the lower Court for enforcement of the decree for injunction under Order-XXI Rule-32 C.P.C.

Subject to the liberty given to the petitioner as above, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.5557 of 2015 is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

09th October 2015
DR