

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 2743 OF 2016

ORDER:

Questioning the order dated 26.04.2016 passed by the III Additional Junior Civil Judge, Nellore, in E.P.No.238 of 2012 in O.S.No.9 of 1995 in allowing the petition with costs as against judgment debtor No.2 and dismissing the petition as against judgment debtor No.3 and issuing warrant of arrest against judgment Debtor No.2, petitioner, who is judgment debtor No.2, is before this court by this civil revision petition.

2. Petitioner herein is the second defendant in O.S.No.9 of 1995 filed by the first respondent/plaintiff and respondent Nos.3 and 4/judgment Nos.3 and 4 are the legal heirs of the second respondent/judgment debtor No.1. The said suit came to be decreed on 11.06.2001, which was confirmed in appeal on 19.06.2007 in A.S.No.67 of 2001. E.P.No.238 of 2012 is filed by respondent No.1/deGREE holder seeking for arrest and detention of judgment debtor Nos.2 and 3 in civil prison for violation of the decree of permanent injunction. Resisting the claim of the decree holder, judgment debtor Nos.2 and 3 have filed counter denying the allegations. In support of the EP, the decree holder himself was examined as PW1 and in support of the judgment debtor Nos.2 and 3, judgment debtor no.2 is examined as RW1.

3. The Decree holder, who was examined as P.W.1, deposed that judgment debtor No.2 is cultivating the EP Schedule property and he is not allowing the decree holder to cultivate the property. P.W.1 further deposed that though he gave complaints to the rural police, they did not take any action against judgment debtor Nos.2 and 3.

4. The Judgment debtor No.2 was examined as RW1. In his evidence he had categorically deposed that he is the son-in-law of judgment debtor No.3 and at the time of deposition he has no relation with the judgment debtor No.3 and deposing before the Court only on his behalf. He denied his causing any interference with the Decree Holder's possession. He deposed that at one point of time he cultivated the suit schedule land and after the suit being decreed he has left the same. He further stated that judgment debtor No.3 personally cultivating the suit schedule property through her men. He had also stated that during the trial of the suit he had deposed that he was cultivating the property of the judgment debtor No.3 on lease basis. He had also further deposed that for the past 15 years he has not cultivated any land in the village as he has 25 acres of land and the same is being cultivated by his son.

5. The learned Junior Civil Judge basing on the evidence of PW1 and taking into consideration of the evidence of the judgment debtor No.2 that he was cultivating the land belonging to judgment debtor No.3, came to an erroneous conclusion that there was an admission on the part of the petitioner. The learned Judge referred to the admission

of the petitioner that in the suit proceedings he had deposed to the fact of his cultivating the land of the judgment debtor No.3. However, the learned Judge failed to consider the specific deposition in the E.P. Proceedings that the petitioner had left the suit schedule land after the suit proceedings and was residing in another village and not cultivating the suit schedule land. This part of the evidence was not adverted to by the learned Judge. Apparently, there is no proof produced by the decree holder showing interference by the judgment debtor No.2 or violation of the judgment and decree passed by the court below nor the decree holder has filed any proof of complaints having been filed before the police. This being a clear error, which is apparent on the face of the record, the impugned order directing issuance of the arrest warrant against the petitioner is unsustainable and is liable to be set aside.

6. The Civil Revision Petition is accordingly allowed setting aside the order dated 26.04.2016 passed by the III Additional Junior Civil Judge, Nellore, in E.P.No.238 of 2012 in O.S.No.9 of 1995. However, considering the age of the first respondent/decreed holder, in the interest of justice, petitioner shall file an affidavit before the court below stating that he shall not in any way interfere with the possession and enjoyment of the decree holder in the suit schedule property and on filing of such undertaking, E.P.No.238 of 2012 shall be closed.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

September 23, 2016
LMV

JUSTICE CHALLA KODANDA RAM

