

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5125 OF 2009

ORDER:

Heard the learned Counsel on either side. Perused the record.

The revision petitioner is the first defendant-Judgment Debtor in O.S.No.113 of 1991 on the file of the learned Principal Junior Civil Judge, Bapatla. The said suit was filed by the first respondent herein seeking permanent injunction restraining the revision petitioner/defendant and their men from interfering with the peaceful possession and enjoyment of the suit schedule property. The said suit came to be decreed on 31.08.1994 granting permanent injunction as sought for against the revision petitioner. Thereafter, the first respondent/plaintiff filed E.P.No.43 of 2006 alleging that the revision petitioner/first defendant violated the judgment and decree dated 31.08.1994 and permanent injunction granted therein. Another plea taken by the first respondent/plaintiff is that by making construction, the revision petitioner/first defendant encroached the suit schedule property. On the other hand, the revision petitioner/first defendant took a plea that the suit schedule property is already existing and they are residing therein.

The Court below after conducting an enquiry and taking into consideration the evidence available on record, recorded a categorical finding that violating the judgment and decree dated 31.08.1994, constructions are being made and thereby found the revision petitioner/first defendant guilty and

sentenced him to suffer simple imprisonment for a period of one month, on condition of the first respondent/plaintiff/decreed-holder paying subsistence allowance to the revision petitioner. In the process, the Court below recorded a finding that the revision petitioner/first defendant has admitted that he has raised construction within the boundaries of the property which is the subject matter of the suit and thereby contended that there is no violation of the judgment and decree dated 31.08.1994.

It is the contention of the learned Counsel for the revision petitioner that the suit schedule property was found to be 2 ½ cents, whereas as taking advantage of the boundaries mentioned therein, though constructions are being made beyond 2 ½ cents, the same cannot be gone into in the EP proceedings.

The Court below had taken into consideration the well settled legal principle that the boundaries prevail over the extents. In the facts of the case on hand, there being admission on the part of the revision petitioner/first defendant/judgment debtor that they were making constructions within the area covered by the judgment and decree, the order of the Court below cannot be found fault. However, the learned Counsel for the first respondent/decreed holder fairly submits that he is not interested to send the revision petitioner/judgment debtor to jail provided the revision petitioner/first defendant and other defendants shall not interfere with the suit schedule property.

Considering the fact that the revision petitioner/first defendant is aged about 60 years even as on the date of filing the EP in the year 2006 and 70 years as of today, the Civil Revision Petition is disposed of subject to the condition of

revision petitioner/judgment debtor removes the constructions within a period of eight weeks from the date of receipt of a copy of this order, the order under revision shall not be given effect to. If the first defendant and other defendants failed to remove the constructions within the time stipulated hereinabove, the first respondent/plaintiff is at liberty to proceed in accordance with law. Accordingly the order under revision is modified.

Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 12TH AUGUST, 2016.

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