

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 318 of 2016

Date :11-04-2016

Between :

Koka Venkataramanappa s/o Veerappa,
Aged 85 years, Occu: Agriculture,
r/o Nimbagallu Village, Uravakonda Mandal,
Ananthapur District, Andhra Pradesh and
another.

... Petitioners/judgment debtors

And

Koka Govindappa S/o Veerappa,
Aged about 74 years, Occu: Agriculture,
r/o.Bimbagallu village, Uravakonda Mandal,
Ananthapur District, Andhra Pradesh.

... Respondent / decree holder

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 318 of 2016

ORAL ORDER:

Parties are referred to as they are arrayed before the Court below.

2. This revision is filed against the order in E.P. No. 33 of 2015 in O.S.

No. 62 of 2005 dated 06.01.2016 on the file of the Court of Junior Civil Judge, Uravakonda. The suit is filed by sole respondent herein praying to grant decree of permanent injunction restraining the defendants/revision petitioners from disturbing the western joint wall of the plaintiff schedule property. The suit was decreed granting permanent injunction regarding the plaintiff schedule property with direction to the defendants not to interfere with the peaceful possession and not to disturb the western joint wall.

3. Alleging that the judgment and decree is violated, plaintiff filed Execution Petition. Plaintiff alleged that the defendants made constructions violating the injunction order. The Court below held that the defendants disobeyed the Court orders, allowed the petition and issued arrest warrant against the defendants.

4. Learned counsel for defendants contended that Court below exceeded its jurisdiction in allowing Execution petition. The defendants have not violated the decree passed in the suit. No demolition took place after the suit was decreed as alleged by the plaintiff. He further submitted that it is a joint wall belonging to plaintiff and defendants and since the house owned by the defendants was in dilapidated condition, defendants decided to undertake construction of new house and accordingly old house was demolished much prior to institution of suit and constructed a new house. The wall being joint wall belonging to the plaintiff and defendants, defendants are entitled to undertake construction on their side of the wall and by doing so, it cannot be alleged that the defendants have violated the decree passed against them. Learned counsel further contended that aggrieved by the ex-parte decree, the defendants filed application to set aside the ex-parte decree and the same is pending consideration by the Court below. The Court below erred in disposing of the Execution Petition, without considering the petition to set aside the ex-parte decree.

5. By referring to the photograph filed at page 41 of the revision,

learned counsel for plaintiff contended that defendants sought to alter the suit schedule property and, thus, violated the decree passed against them. Defendants caused damage to the wall. He therefore, justifies the order passed by the Court below.

6. The averments in para 3 of the plaint disclose that by the time suit was instituted the defendants already demolished the house belonging to them and started constructing a house in their open site. It was alleged that in the process of undertaking construction, the defendants were affecting the joint wall, which might endanger the entire structure of his property. It was further averred that in spite of plaintiff requesting defendants not to disturb the joint wall, as any disturbance to the joint wall would result in collapse of his house, they did not heed to his request and proceeded to undertake construction.

7. These averments would disclose that even by the time, the suit was instituted, the house belonging to defendants was already demolished in order to construct a new house within their property. Photograph at page No. 41 filed along with this revision would show that joint wall was partially affected. Photographs filed by the plaintiff along with the vacate petition would disclose that by December, 2015, defendants constructed a new house and affected portion of the wall is also now filled up.

8. These photographs are testimony to the fact that after the suit is decreed, no demolition is caused and in fact the small offending portion of the joint wall is now filled.

9. The Constitution of India guarantees every citizen fundamental right to freedom and liberty. When personal liberty of a person is in jeopardy, the Court must be extra cautious and unless there is unimpeaching evidence to show that his actions were deliberate, willful and his conduct offends the authority of the Court, his liberty and freedom should not be curtailed.

10. Though, the Court below elaborately discussed the rival contentions, without giving any findings on the rival contentions, allowed the Execution Petition and ordered for arrest. It is not stated how the defendants disobeyed the decree passed by the Court below, much less, such disobedience is not held as deliberate and willful. On the contrary, material

on record would disclose that no damage whatsoever is caused to the schedule joint wall by the defendants after the decree was passed.

11. The order under revision is unsustainable and it is accordingly set aside. In the result, the revision is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:11.4.2016
TVK

P NAVEEN RAO,J

HONOURABLE SRI JUSTICE P. NAVEEN RAO

-

-

-

-

-

-

-

-

-
-
-
-
-
-
-
-
-
-

CIVIL REVISION PETITION No. 318 of 2016

Date :11-04-2016

Tvk