

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petitions No.1356 of 2016

ORDER:

This revision petition is filed under Section 115 of the Code of Civil Procedure, 1908, (for short, "CPC"), challenging the order dated 03.02.2016 in E.P. No. 41 of 2012 in O.S. No. 128 of 1993 of the learned Principal Junior Civil Judge at Puttur directing to commit the revision petitioners/judgment debtors 1 to 3 to Civil prison for a period of two months for wilful failure to obey the decree for perpetual injunction in the said suit granted in favour of the respondent/decree holder.

2. The afore-stated suit was decreed on 20.08.1997 by the learned Principal Junior Civil Judge at Puttur. Aggrieved thereby, the Judgment debtors filed A.S. No. 30 of 1997 before the learned Senior Civil Judge at Puttur. The said appeal was dismissed on 18.10.2001 confirming the decree of the trial Court. No further appeal having been preferred, the said decree for perpetual injunction has become final.

3. E.P. No. 41 of 2012 under Order XXI Rule 11 (2) read with Rule 32 of CPC was filed by the decree holder before the learned Principal Junior Civil Judge at Puttur against the judgment debtors seeking the afore mentioned relief. In the EP and the supporting affidavit it was alleged as under: "The judgment debtors are fully aware of the fact that the judgment and decree passed by the learned Principal Junior Civil Judge at Puttur as confirmed by the learned Senior Civil Judge have become final; the judgment debtors who are fully aware of the said decrees and

judgments passed in the suit and the appeal once again made an attempt on 01.06.2012 at about 10.00 AM to cut Teak trees existing in the EP schedule property by violating the decree and further destroyed the ground nut seeds, while the decree holder was sowing the same in the schedule property; thereupon, the decree holder brought to the notice of the judgment debtors, the decrees and judgments in the afore-said suit and the appeal and gave photostat copies of the same to them; the judgment debtors having received the said copies tore them away wantonly and resorted to reckless, careless and adamant behaviour saying that no Court can stop their unlawful acts and that they are alone the rulers of the society; hence, without the aid of the police the decree holder is not able to stop the unjust acts of the judgment debtors and protect his property; the decree holder brought the facts to the notice of the village elders; they advised the judgment debtors to obey the injunction orders; the judgment debtors did not care for the words of the elders; the acts of the judgment debtors are contemptuous; hence the execution petition is filed requesting to detain the judgment debtors in civil prison for a period of two months as per Rule 32 of CPC for the offence of contempt of Court; on the decree holder approaching the police of Vedurukuppam, they advised him to get police aid orders from the Court; hence, a separate petition is also filed for grant of police aid to protect the decree holder's life and property."

4. 1st judgment debtor filed a Counter. The same was adopted by the judgment debtors 2 and 3. While denying the allegations made in the EP and the affidavit of the decree holder it is contended as follows:

“The petition is not maintainable under facts and in law. The decree holder is put to strict proof of the allegations made by him. The allegation that the judgment debtors attempted on 01.06.2012 at about 10.00 AM to cut Teak trees existing in EP schedule property is false. The judgment debtors never violated orders of injunction and never destroyed the ground nut seeds in the schedule property. The other averments that a request was made by the decree holder by showing the copies of the decree and judgment and that the judgment debtors tore away the said papers are false. The EP schedule property is a Government poramboke. The decree holder misrepresented the facts and obtained the decree. Anyhow the judgment debtors never violated the decree. Since the alleged incident is false, the other averments made by the decree holder do not arise for consideration. The decree holder was never in possession of the EP schedule property. In the year 2007, after due enquiry, the Government have granted DKT Patta to the 1st judgment debtor in respect of EP schedule property. The decree holder also filed a suit OS 26 of 2012 in respect of land by the side of the EP schedule property against the judgment debtors; and this EP is filed to threaten the judgment debtors to come to compromise. The EP is liable for dismissal with costs.”

5. At the time of enquiry, the decree holder and a supporting witness were examined as PWs. 1 and 2 and exhibits P1 to P7 were marked. On behalf of the judgment debtors, the 1st judgment debtor and supporting witnesses were examined as RWs. 1 to 4 and exhibits R1 to R5 were marked.

6. On merits, the learned Principal Junior Civil Judge, Puttur, allowed the execution petition and directed to commit the judgment debtors 1 to 3 to Civil prison for a period of four months for wilful failure to obey the decree for perpetual injunction granted in favour of the decree holder. Aggrieved thereby, the present revision is filed.

7. Arguments of both sides were heard.

8. *Sri M. P. Chandramouli*, learned counsel for the petitioners/judgment debtors contended as under: "The order passed by the Executing Court is contrary to law and material evidence on record. The Court below ought to have held that the respondent/decreed holder failed to establish that the judgment debtors had violated the decree and are liable for punishment. PW1 is the decree holder and PW2 is an interested/related witness. No independent witness was examined to establish the alleged violation of the decree for perpetual injunction. The decree holder also filed against the judgment debtors, a suit OS 26 of 2012 in respect of the land situate by the side of the EP schedule property. This EP is filed to threaten the judgment debtors to come to compromise. The two allegations in regard to alleged violation or disobedience of the decree are false and do not constitute acts of contempt and give rise to cause of action for initiation of the execution proceedings for contempt or wilful violation of the decree for perpetual injunction. The first allegation merely is that the judgment debtors attempted to cut the Teak trees existing in the schedule land; mere allegation of attempt cannot be considered as a disobedience of the decree for perpetual injunction. It is not the case of the decree holder that there is actual violation of the

decree and that Teak trees were cut. In fact there are no such trees in the land and the decree schedule does not reflect the existence of any trees in the schedule land. The other allegation is that the judgment debtors destroyed the ground nut seeds, while the decree holder was sowing the same in the schedule property. No such incident has ever happened; the said allegation is invented. No copies of decrees and judgments were shown and no further alleged incidents took place. The judgment debtors never violated the decree for injunction. No grounds are made out and no acts of contempt much less wilful acts of violation of the decree are established. In the prayer in the EP, the decree holder prayed the Court to send the judgment debtors to civil prison for a period of two months, but, the executing court imposed punishment for a term of four months. The findings of the court below are perverse and unsustainable and the impugned order directing that the judgment debtors be sent to civil prison deserves to be set aside.”

9. On the other hand, *Sri V. Jagapathi*, learned counsel appearing for the respondent/Decree holder, while reiterating the pleaded case of the decree holder and while supporting the orders of the executing Court contended as follows: “The order passed by the Court below is valid and correct, and does not warrant interference by this Court in exercise of its powers under Section 115 of CPC. The decree holder proved the pleaded violation of the judgment and decree by the judgment debtors by adducing necessary evidence. The subsequent conduct of the judgment debtors even in the face of the decree suffered by them, as is evident from the exhibits marked and their assertions before this Court and the

executing Court to the effect that the decree holder is not in possession of the schedule property and that the decree schedule land is a Government land and that they were granted DKT patta by the Government in respect of the schedule land are by themselves sufficient to hold that the judgment debtors have no respect for truth and law. Despite a question posed in the cross examination as to whether the judgment debtors are willing to give an undertaking that they will obey the decree, an answer is given stating that they are not willing to give any such undertaking. Even before this Court no sincere offer is made to give such an undertaking. It is not even stated in their pleading and submissions that they have respect for truth & law and Court orders & decrees. Their wilful conduct and acts of violations besides nonchalant statements made before the Courts lay bare that they are not willing to abide by the law and orders and decrees of the Court. Unless they are punished for contempt and for showing wilful disobedience to the decree of the Court they will not obey the decree of the Court even in future. The decree holder is facing serious threats and is not in a position to enjoy the fruits of the decree peacefully. Though there is no pleading in the counter they deliberately contended that there are no Teak trees in the schedule property. The judgment debtors cannot be heard to say that the decree holder is not in possession as they are bound by the decree for perpetual injunction and are obliged to honour the same when once it has become final and binding on the parties. The very conduct in raising contentions contrary to the perpetual injunction decree and their assertion that the decree is obtained by misrepresentation is itself sufficient to punish them for wilful violations of the decree for perpetual injunction. Therefore, the judgment debtors are liable to be

detained in a civil prison at least for a period of two months as sought by the decree holder if not for four months.”

10. I have noted the submissions and given earnest consideration to the facts and submissions. I have perused the copies of depositions and material record.

11. Order XXI Rule 32 (1) of C.P.C., insofar as it is relevant, states as under:-

"Order XXI Rule 32:

Decree for specific performance for restitution of conjugal rights or for an injunction:

Where the party against whom a decree for specific performance of a contract or for restitution of conjugal rights or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both."

11.1 In view of the provision of law and the fact that the judgment debtors are not denying the knowledge of the perpetual injunction decree and the further fact that they had an opportunity of obeying the decree, it is to be now examined as to whether the decree holder established as required under law that the judgment debtors had wilfully failed to obey the decree by indulging in the *overt acts* pleaded by the decree holder. Hence, it is necessary to now refer to the evidence.

11.2 The decree holder in his affidavit filed in lieu of examination in chief reiterated his pleaded case and maintained his stand in the cross examination and denied the suggestions put to him in line with the

defence of the judgment debtors, which is adverted to supra. However, he admitted that on the Southern side of the EP schedule property there is a property belonging to the 1st judgment debtor and stated that he filed documents to show that he raised ground nut crop in the EP schedule property and that he filed OS.no.26 of 2012 against the judgment debtors in respect of a property situate towards the Eastern side of the EP schedule property, which also belongs to him, but denied the suggestion that he filed the present proceedings to force the judgment debtors to come for a compromise in the said suit. It is pertinent to note that when it was suggested to him that he is not in possession and enjoyment of the EP schedule property and that he has no right over the same, he denied the said suggestions. He was also subjected to cross examination about some other proceeding in OS.No.115 of 2013. Though it was asserted in his affidavit that when copies of decrees and judgments of both the Courts were given to the judgment debtors, they had wantonly tore them away and resorted to reckless, careless and adamant behaviour and stated that 'no Court can stop their unlawful acts and they are alone rulers of the society', there is no specific cross examination on the said aspect.

11.3 PW2, who is a 3rd party and distantly related to the decree holder, was examined to corroborate the version of the decree holder. He affirmed in his affidavit filed in lieu of examination in chief that the judgment debtors made illegal attempts to cut teak trees existing in the EP schedule property by trespassing into the property on 01.06.2012 at about 10:00 A.M., and that they destroyed the ground nut seeds while the decree holder is sowing the same in the property and that the decree

holder requested the judgment debtors not to do so and that the judgment debtors having received photostat copies of decrees and judgments wantonly and recklessly tore them away saying that no Court can stop their unlawful acts and that they are the rulers of the society and that thereafter the decree holder informed about the incident to the village elders and that the village elders also advised the judgment debtors to act properly and obey the injunction orders but the judgment debtors did not heed the advise of the said elders and that he noticed the incident. In his cross examination he admitted that the decree holder is his uncle by courtesy and that he has also got landed property at a distance of one furlong from the EP schedule property and denied the suggestions put to him and maintained his stand.

11.4 RW1 reiterated his defence in his affidavit filed in lieu of examination in chief. He asserted in his cross examination that the EP schedule property is a Government land and that the decree holder obtained judgment and decree against him after full fledged trial but he does not know whether the appeal was disposed of or not and that he is not aware of the other suit-OS.No.115 of 2013 and denied the suggestion that he engaged a counsel and contesting the said suit by filing documents. He admitted that he knows about the judgment passed in the instant suit-OS.no.128 of 1993 and that he was restrained from interfering with the possession of the decree holder but again affirmed that according to him no one is in possession and enjoyment of the EP schedule property and he is not aware of the date of the issuance of the DKT patta in his favour in respect of the EP schedule property and that he does not also

remember whether the patta was issued during the pendency of the appeal or not and whether he filed such patta in the said appeal or not and that he does not know whether pattadar pass book and title deed book were issued to the DHr in respect of the EP schedule property prior to the issuance of the patta in his favour and that he does not also know whether the decree holder initiated proceedings for cancellation of DKT patta. He also stated that he lodged a report against the decree holder under the provisions of Scheduled Castes and Scheduled Tribes (POA) Act and stated that he does not know whether the photographs, exhibit P4, reveal the identity of the DHr and where the land shown in exhibit P4 is situate. He further stated that he never entered the EP schedule property and that no document stands in his name in respect of the EP schedule property and denied the suggestion that the decree became final and binding upon him and that on 01.06.2012 at about 10:00 A.M when the DHr is ploughing the land he and other judgment debtors 2 and 3 went there and violated the decree directions and therefore he is liable for consequences.

11.5 RWs 2 to 4, who were examined to support the case of the judgment debtors and corroborate the evidence of RW1, stated that the judgment debtors never violated the orders of injunction in the above suit and never made any attempts to cut Teak trees and never destroyed the ground nut seeds which were sown in the schedule property and that the decree holder never gave any copies of documents to the judgment debtors and they did not commit any illegal acts violating the injunction orders.

11.6 RW2 also further stated that the EP schedule property is a Government poramboke land and that the decree holder misrepresented the facts and filed the EP against the judgment debtors with a view to harass them. In his cross examination he stated as under: - 'He got landed property near the EP schedule property but he does not know the survey number of the property. He does not know the purpose for which the DHr filed the EP and the details of the parties and the survey number of the EP schedule property and its boundaries. He does not know about the contents of the chief examination of PW1'. However, he further affirmed in his cross examination that the EP schedule property is a Government land and that he did not go through any record pertaining to the EP schedule property and that he does not know about the entries in the revenue records. He denied the suggestion that the judgment debtors are related to him and that he is **deposing** falsehood to help them. RW3 further stated that the execution petition schedule property is a Government poramboke land and it is of an extent of Ac.3.24 cents and that the land of the decree holder is in S.No.235/1 and it is of an extent of Ac.2.24 cents and that the father of the decree holder, Siva Sankara Reddy, sold the property to the father of the judgment debtor and that the decree holder threatened the judgment debtors to come for a compromise. In his cross examination he stated that he saw the registered sale deed that stands in the name of Solmon, father of the 1st judgment debtor, but he does not remember the names of the witnesses who signed in the registered document and that there is a dispute between the parties since ten years and that he does not know the result of the instant suit-

OS.No.128 of 1993 and he does not know the relief claimed by the decree holder in the present petition and that the judgment debtors gave a complaint that the decree holder made galata relating to the land in S.No.235/1 and that the judgment debtors filed a criminal case against the decree holder under the provisions of SCs & STs (POA) Act. RW4 in his affidavit filed in lieu of his examination in chief further stated that he is looking after the case on behalf of the judgment debtors. In his cross examination he stated that the EP schedule property is in survey number 199 and its extent is Ac.3.24 cents and that he married the grand daughter of the 1st judgment debtor and that he knows that the EP schedule property is a Government land and that he did not go through any record and that since 35 years there are disputes between the parties and that he does not know that in the decree and judgment it is stated that the EP schedule property is not a Government land and that he and his family members are parties to OS.No.115 of 2013. He denied the suggestion that he accompanied the judgment debtors and violated the decree and judgment in OS.No.128 of 1993 and denied the further suggestion that on 01.06.2012 at about 10:00 AM judgment debtors made an attempt to cut Teak trees in the EP schedule property and destroyed the groundnut seeds and that he and the judgment debtors tore away the copies of record and threw the same on the face of the DHr.

11.7 I have carefully perused exhibits P1 and P2, certified copies of decree and judgment in AS No. 30 of 1997; exhibit P3, certified copy of the judgment in OS.No.128 of 1993; exhibit P4, six photographs along with CD; exhibits P5 and P6, certified copies of the plaint and written

statement in OS.No.115 of 2013 respectively; exhibit P7, certified copy of the affidavit and petition filed by the present decree holder in IA.No.758 of 2013 in OS.No.115 of 2013; exhibit R1, certified copy of suit register extract; exhibit R2, the served copy of plaint in OS.No.26 of 2012; exhibit R3, certified copy of registered sale deed dated 14.12.1973 executed by Shankar Reddy in favour of Solmon; exhibit R4, fair adangal copy issued on 11.11.1999 by MRO, Vedurukuppam Mandal; and, exhibit R5, served copy of summons in OS.No.26 of 2012.

12. Before this Court, it is not in dispute and even the evidence on record also discloses that the decree which is the subject matter of the execution proceedings has become final and that by the said decree, the judgment debtors were restrained by a perpetual injunction from interfering with Dhr's/plaintiff's possession and enjoyment of the decree schedule land. Despite a decree granted against them and in favour of the Dhr, the judgment debtors deliberately contended in their counter and adduced evidence on their side that the suit land is a Government poramboke and that the Dhr is not in possession and that a patta was granted in favour of the 1st judgment debtor in respect of the schedule land. Though it is repeatedly asserted in the defence of the judgment debtors that a DKT patta was granted, the same was admittedly not filed and exhibited and such a patta, if any, has not seen the light of the day. Further, RW1 in his cross examination stated strangely that according to him no one is in possession of property, though as per the terms of decree for perpetual injunction the Dhr was and is in possession of the schedule land. Be it noted that such a decree was granted on merits and after full

fledged trial on account of the fact that the judgment debtors are interfering with DHr's possession and that they are liable to be restrained by way of a perpetual injunction to enable the DHr to peacefully enjoy the schedule property without any interference from the JDrs and the persons claiming through them. The very conduct of the judgment debtors in raising and continuing an untenable and unholy defence in the proceeding is by itself sufficient to safely hold that they are not law abiding citizens and they are indulging in acts prohibited by decree, which has become final, and that they are not obeying the decree and are also not prepared to obey the decree. The claim of the judgment debtors in the counter and the evidence contrary to the mandate of the decree on a harmonious consideration are also sufficient to come to a safe conclusion that the judgment debtors wilfully and deliberately disobeyed the decree for perpetual injunction and exhibited a conduct in the nature of supine indifference to the decree of the Court and therefore rendered themselves liable for civil contempt. The judgment debtors did not even plead in their defence that they have got respect for truth and law, as rightly contended by the learned counsel for the decree holder. Thus wilful failure to obey the decree for perpetual injunction and wilful breach of the same are adequately established.

13. In *Jai Dayal and others V/s Krishan Lal Garg and others*¹, the Supreme Court held thus: "It is seen that once the decree of perpetual injunction and mandatory injunction has become final, the judgment-debtor is required to obey the decree. In whatever form he

¹ AIR1997SC3765

obstructs, it is liable to removal for violation and the natural consequence is execution proceedings under Order XXI, Rule 32, CPC.” The Supreme Court also held that in case the judgment debtor did not obey the injunction, he is liable to be detained in civil prison and his property is also liable to be proceeded against, if it is under attachment. In *Kanwar Singh Saini V/s High Court of Delhi*², the Supreme Court held as under: “The provision of Order 21, Rule 32 of Code of Civil Procedure applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of Order 21, Rule 32 Code of Civil Procedure as the Code of Civil Procedure provides a particular manner and mode of execution and therefore, no other mode is permissible. (See: *Hungerford Investment Trust Ltd. (In voluntary Liquidation) V/s Haridas Mundhra and Ors.* AIR 1972 SC 1826).” In *Kanwar Singh* (2nd supra) the Supreme Court having referred to the decision in *State of Punjab V/s Mohinder Singh Randhawa*³ reiterated that it is settled legal position that executing Court does not have the power to go behind the decree and thus in the absence of any challenge to the decree no objection can be raised in execution. In the light of the legal position obtaining, it follows that the decree holder in the present case has rightly invoked Order XXI

² 2012(2)ALD58(SC)

³ AIR 1992 SC 473

Rule 32 of CPC and established wilful and deliberate and conscious acts of violation and disobedience of the decree for perpetual injunction on the part of the Judgment Debtors. Whereever there is a wilful disobedience or contumacious conduct - deliberate flouting of the order or decree of the court, it amounts to contempt and it becomes the duty of the court to exercise its statutory power to set the wrong right as a party cannot be permitted to perpetuate the wrong by disobeying the order or decree further. For the survival of the rule of law the orders and the decrees of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional Courts. This Court finds merit in the contention of the learned Counsel for the DHr that unless there is some order of detention of the JDrs in civil prison, no effective execution of the decree can be achieved.

14. On the above analysis of facts, evidence brought on record and the legal position, this court is satisfied that the petition filed by the DHr is maintainable and that the DHr by adducing sufficient evidence of the required standard adequately established the necessary ingredients for ordering arrest of the JDrs 1 to 3 and detaining them in civil prison for an appropriate period subject to payment of subsistence allowances payable by the decree holder in that regard.

15. Coming to the measure of sentence, as rightly contended by the learned counsel for the judgment debtors though the decree holder requested the executing Court to commit and detain the judgment debtors in civil prison for a period of two months, the Court below imposed a punishment of four months, which cannot be sustained. However, in view

of the finding of this Court that the judgment debtors are liable for punishment in view of the fact that their acts and omissions are deliberate and are in defiance of the decree for perpetual injunction, it follows that this is a clear case for awarding sentence. However, while awarding sentence on the judgment debtors, the Court does so to uphold the majesty of the law and to ensure that the unflinching faith of people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. The Court is duty-bound to award proper punishment to uphold the rule of law, however high the person may be [*J. Vasudevan V/s T.R. Dhananjaya (1995) 6 SCC 249*]. Accordingly, this court holds that detention of each of the judgment debtors in civil prison for a period of 15 days would meet the ends of justice.

16. In the result the Civil Revision petition is dismissed without costs; however, the judgment debtors shall be detained in civil prison for a period of 15 days each instead of for four months as held by the Court below. Their subsistence allowances are fixed at Rs.2,500/- each per the 15 days period. Hence, the DHr shall deposit total Rs.7,500/- to the credit of the EP on the file of the Court of the learned Principal Junior Civil Judge at Puttur on or before 22nd November, 2016. The JDrs shall surrender before the said Court at 10.30 AM on 24th November, 2016 to enable the said Court to pass corollary orders of committal of the JDrs to civil prison subject however to the DHr depositing the subsistence allowances for detaining or keeping the JDrs in civil prison. On the failure of the JDrs to appear before it on the said date, the said Court shall secure their

presence by following the procedure established by law and send them to civil prison and authorise their detentions in civil prison for a period of 15 days each as directed in these orders. The amount deposited by the DHr shall be defrayed towards the subsistence allowances of the JDrs.

Miscellaneous petitions pending, if any, in this revision petition shall stand closed.

1st November, 2016
Vjl

M.Seetharama Murti, J

