

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.98 OF 2016

ORDER :

The petitioners herein are J.Dr.No.3 and 5 in O.S.No.17 of 2011 on the file of the Additional District Judge, Kovvur, West Godavari District.

2. The said suit was filed by the respondents 1 to 3 against the petitioners and others for declaration that the 1st respondent is the vested remainder holder of items No. 1 & 2 of the plaint schedule; that the 2nd respondent is the absolute owner of items No.3 & 4; and 3rd respondent is the absolute owner of item No.5 of the plaint schedule; and for recovery of vacant possession of items 3 & 4 to the 2nd respondent and item No.5 to the 3rd respondent by evicting the petitioners; and for future mesne profits and costs.

3. The said suit was decreed on 02.06.2014 and costs of Rs.2,35,943/- were awarded.

4. Petitioners preferred A.S.No.475 of 2014 to this Court and in that appeal, they filed AS.MP.No.1745 of 2014 seeking suspension of the judgment of the trial Court. The same was granted initially on 10.10.2014 subject to payment of proportionate costs within six (06) weeks from that day and the respondents were permitted to withdraw it without furnishing security.

5. The respondents filed AS.MP.No.2085 of 2014 in the above appeal to vacate the above order and the said order was vacated on 02.12.2014. Subsequently, possession of the properties was delivered to the respondents.

6. To execute the decree for costs granted to them, the respondents 1 to 3 filed E.P.No.8 of 2014 against the petitioners and other J.Drs under Order 21 Rules 37 and 38 CPC.

7. Petitioners contested the said EP taking a stand that they have no means to discharge the decree and sought to dismiss the EP.

8. In the said E.P., the respondents examined the 2nd respondent as PW1. On behalf of the JDRs., RW1 was examined. Although time was granted to the petitioners to adduce evidence, they did not adduce any evidence. So their evidence was closed.

9. The 2nd respondent/PW1 in his evidence asserted that petitioners have vast properties and they had even deposited a portion of the decretal amount as per the direction of the High Court in A.S.No.475 of 2014 initially. This witness was not cross-examined by the petitioners. The petitioners also did not enter the witness box in support of their plea that they have no means to satisfy the decree for costs. The Court

opined that the petitioners have deposited the maximum portion of the decretal amount towards costs as per the direction of this Court and this shows that the petitioners had adequate means to satisfy the decree and they were intentionally not paying the amount. It therefore, held that it was a fit case to order for arrest of the petitioners under Order 21 Rule 38 CPC.

10. Counsel for the petitioner contends that the petitioners have no means to satisfy the decree and the respondents also did not produce any material to show that petitioners had properties. It is not disputed by the counsel for the petitioner that maximum portion of the costs awarded had been deposited by his client pursuant to the interim order granted initially in AS.No.475 of 2014. When the petitioners did not cross-examine PW1 and did not enter the witness box to plead about their financial position, I am of the considered opinion that the Court below was correct in coming to the conclusion that the petitioners had means to satisfy the decretal amount and were intentionally not paying the same to the respondents.

11. Counsel for the petitioner contended that if really there were other properties belonging to the petitioners, the respondents should first attempt to execute the decree by attachment and sale of properties and then only seek to have the petitioners arrested under Order 21 Rule 37 and 38 CPC.

12. There may be several modes of execution of a decree, but it is the choice of the decree holder to adopt the means which he feels is convenient. No precedent is cited by the petitioners in support of their plea that the respondents should first exhaust the other modes of execution before invoking Order 21 Rule 37 CPC.

13. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court under Section 115 of CPC.

14. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs. However, the petitioners are granted one month's time from date of receipt of a copy of this order to pay the balance decretal amount to the respondents. In default of such payment, the order of the Court below shall be executed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

10th June, 2016
gra