

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3365 of 2014

ORDER:

The revision petitioner is the decree holder in E.P. No.219 of 2000 of the permanent prohibitory injunction decree in O.S.No.250 of 1995 on the file of Principal Junior Civil Judge, Kavali of P.S.Nellore District, A.P.

2) Pursuant to the permanent injunction decree in O.S. No.250 of 1995 supra, the D.Hr filed the Execution Petition No.219 of 2000 under Order XXI Rule 32 C.P.C alleging violation of the permanent injunction, by the respondents 1 to 3 of whom respondent No.1 shown as cultivator and 75 years old (served and failed to attend), respondent No.2 shown as house wife-cum-cultivator and 55 years old (contesting) and respondent No.3 shown as house wife and 45 years old (unclaimed notice) and the permanent prohibitory injunction decree is in relation to the decree schedule property which is of Bogole Grampanchayat of Kavali Sub-registry, Nellore District in patta No.300, S.No.501/ 1C of an extent of Ac.0.14 cents out of total extent of Ac.0.65 cents within the four boundaries mentioned i.e., eastern side land belongs to 1st defendant to some extent and cart track to some extent, southern and Northern side land belongs to 1st defendant and western side Dagadarthi Canal.

3) The lower Court dismissed the execution petition vide order dated 05.01.2007 saying the execution petition is not with particulars, there is no proof of violation of injunction, for the alleged rising of fence, if at all a remedy could have been availed by seeking amendment of pleadings to seek alternative or further relief of

mandatory injunction and without which the Court cannot remove the alleged fence by converting the permanent injunction into mandatory injunction in relation to the relief; as also laid down by this Court in *Y.Lakshmaiah vs ESSO Eastern Inc.*,¹. It is impugning the same, the present revision is maintained.

4) Heard learned counsel for the revision petitioner/ decree holder in E.P No.219 of 2000 in O.S. No.250 of 1995 and learned counsel for the 2nd respondent and taken as heard the respondents 1 & 3 to decide on merits and perused the material on record.

5) It is one of the submissions by the learned counsel for the 2nd respondent/ J.Dr that he has no instructions even as to the 1st respondent aged about 75 years by the time of filing the E.P in the year 2000 is still alive or not, to pass any order as prayed for to send to civil prison, apart from that there are no merits in the very execution petition as rightly concluded by the lower Court and for this Court, within the limited scope against the impugned order, while sitting in revision, there is nothing to interfere and prayed to dismiss the revision petition.

6) Undisputedly, the trial Court's decree granting permanent injunction relief was made absolute even though the respondent/ defendants preferred first and second appeals unsuccessfully. The trial Court was passed the decree on 19.09.2000. The execution petition was filed on 16.10.2000. It is one of the observations by the executing Court in saying the injunction violation application in E.P. No.219 of 2000 filed under Order XXI Rule 32 C.P.C was even before the expiry of the appeal time from the date of the lower Court's judgment. In fact, right of

¹ AIR 1974 AP 32

appeal is one thing available as a statutory relief to the parties and the operation of the decree from the time it was granted in favour of the D.Hr is another thing. It is thereby even filing of an appeal does not operate of decree stay of decree unless there is a specific stay order obtained under Order XLI Rule 5 C.P.C either from the trial Court, which passed the same before obtaining certified copies of the decree and judgment to prefer an appeal or by the Appellate Court pending disposal of the appeal, as the case may be, subject to such terms as contemplated by the provision. Thus, merely because, there is a right to prefer an appeal, there is no law to say, in the mean time, for any violation, execution petition cannot be filed invoking Order XXI Rule 32 C.P.C and there is nothing even to say the Court cannot proceed with any such petition before expiry of appeal time. On the converse, it is the duty of the Court to see that the decree passed by it is to be enforced to enable the D.Hr to enjoy the fruits of the decree early unless there is a suspension of the decree or reversal of the decree including by any appellate order or stay by appellate Court, as the case may be.

7) Now coming to the other merits concerned, no doubt, the prayer in the execution petition at column No.12 reads as follows:

As per Order 21 Rule 32 C.P.C. in relation to the E.P Schedule property, which is in the possession and enjoyment of the D.Hr as the J.Drs are obstructing D.Hr, to send the 1st J.Dr to civil prison under the provision.

8) The executing Court observed that the E.P prayer is bereft of particulars of the date or manner of obstruction but for saying there is obstruction of violation of the injunction decree.

9) In the chief affidavit of the D.Hr, it is mentioned that the suit O.S No.250 of 1995 for permanent injunction was decreed in his favour on 19.09.2000. Aggrieved by the same, the defendants preferred A.S No.42 of 2000 before the Senior Civil Judge, Kavali and the said appeal was ended in dismissal on 03.12.2001, thereby they filed a Second Appeal before the High Court of A.P in S.A. No.4 of 2002 and the same was also disposed of on 26.04.2004. The deponent—D.Hr further says, the J.Drs violated the Court orders of injunction with their political influence in their village and they are causing obstruction to the D.Hr to pass through the cart track hence issued notice to the J.Drs and on enquiry send the 1st respondent to Civil prison otherwise the bullock cart cannot be moved through plaint schedule property, it is the evidence in chief and in the cross examination of the D.Hr as PW.1, who deposed that the permanent injunction relief granted in favour of the D.Hr and against the defendants 1 to 3 is by restraining them from interfering with peaceful possession and enjoyment of the decree schedule property and he filed E.P. in the year 2000, which is after the decree obtained in the year 2000 and subsequent to the passing of the decree, the J.Drs did not allow the decree holder to go to E.P Schedule property by putting fence and the J.Drs are obstructing the D.Hr to come into the schedule property. He denied the suggestion that no relief was granted in his favour and against the defendants for injunction not to interfere with the moving of carts through the cart track or through plaint schedule and the injunction orders obtained against the defendants without impleading the original owners, who are inmates of some of the defendants and against the decree, the appeal filed in Kavali Sub-court and the same is pending. He further deposed that he did not mention in chief affidavit that J.Dr obstructing him in respect of plaint schedule

property subsequent to disposal of the appeal by High Court. He further deposed that J.Dr No.1 is aged about 75 years and as on the date of giving evidence in February, 2006. The J.Dr is not able to come out from the age and health condition. He denied the suggestion of raised raising mango garden on the southern side of said land even just after filing of the suit by the plaintiff and now those are aged 15 years and having knowledge of the case, he did not bring to the notice of the Court and other J.Drs did not violate any Court orders. It is the sum and substance of the evidence of the D.Hr and the cross examination of D.Hr. On behalf of J.Drs, the 2nd J.Dr—Pullamma deposed in her chief affidavit that neither she nor 3rd J.Dr violated any orders of the Court and they have no lands nearby cart track and suit property and they are nothing to do with the alleged cart track and they never violated any injunction orders of the Court. In the cross examination, she deposed that she does not know about the suit filed by the D.Hr but for to say she signed on certain documents at request of her husband and she does not know the contest in the suit and decree of the suit and the appeal filed by her against the decree. She does not know who have been looking after her court affairs and even she does not know the contents of chief affidavit. Thus, practically her evidence is of no use.

10) The counter filed in opposing the E.P as objections to it by the 1st respondent in nutshell are that the chief affidavit filed in 2006 does not speak date and time and manner of obstruction and what are the documents placed reliance in support of the chief affidavit and there is nothing to mark the documents sought for and the police aid granted to the D.Hr by the Court is confined to restrain the J.Drs from interfering and not for removal of existing fencing by any mandatory order and the chief affidavit of M.Subba Reddy—1st respondent as RW.1

stating that the obstructions and alleged interference are untrue and the subject matter of the trial Court's decree is pending in appeal before the Sub-Court Kavali and the alleged violation said to have been committed prior to delivery of the judgment of appellate Court and E.P, thereby not maintainable and he is aged about 75 years and not in a position of coming out from the house and none of the J.Drs are interfering with the possession and enjoyment of the D.Hr and they are nothing to do with the lands nearby cart track and D.Hr did not give any police report before filing E.P for alleged violation and the execution petition is to wreck vengeance against them. In the cross examination of RW.1—1st J.D.R deposed that he does not know whether any stay obtained pending appeal against the execution proceedings and whether Cherreddy Subba Reddy and Bijjam Venkat Reddy were impleaded as parties in the suit on their own. However, the decree of the trial Court was confirmed by the 1st Appellate Court and also in the Second Appeal by High Court and made final and he does not know the contents of his chief affidavit but for signing and it is not true to say that he violated the Court orders.

11) From the evidence on record referred supra, it is deposed that there is fence obstructing the D.Hr to enjoy the permanent injunction. It is the case of the D.Hr that the obstruction is after the decree. The expression referred by the lower Court in Lakshmaiah (supra) what it says is before filing of the suit, if there is any mandatory relief ought to be sought to restore the status-quo ante but for permanent injunction that was even decreed under the guise of permanent injunction decree execution, the D.Hr cannot seek status-quo ante of the affairs prior to the suit for no mandatory injunction sought in the suit and thereby cannot covert the prayer injunction decree into the

mandatory injunction. The principle laid down in the facts of that case has no application for not the case here that there was any fence since before filing suit causing obstruction and a mandatory injunction relief ought to be asked in the trial Court. The trial Court granted prohibitory injunction relief that was confirmed in the appeal. Undisputedly, when it is the case of the D.Hr from the evidence that the fence laid to cause of obstruction, after passing of the decree, it is the duty of the Court from the explanation to the wording of Order XXI Rule 32 C.P.C, for the act required to be done even it did not cover prohibitory relief by injunction invoking the provision. It is to say, subsequent to filing of the suit decree, if there is any act done, required to give mandatory relief to restore status-quo ante, that can be granted in executing the prohibitory injunction decree. As such, the conclusion contra arrived by the lower Court is unsustainable. The trial Court totally went wrong, despite the allegation of violation of the injunction and that too, it is the case of the respondents of total denial and there is a fence, which said to have been laid by them after the decree was passed and that was not specifically disputed by the J.Drs, in dismissing the execution petition instead of allowing by providing police aid to remove the fence at the expenses of the D.Hr to enforce the decree and to have the fruits of the decree though not to sent any of the J.Drs to civil prison, even so asked.

12) Having regard to the above, the revision is allowed to the extent of providing police aid to the D.Hr to remove the fence causing obstruction to the enforcement of the prohibiting injunction relief in favour of the D.Hr for his ingress and aggress through plaint schedule property at the expenses of the D.Hr. The D.Hr is entitled to approach the trial Court by filing E.A, pursuant to this order, to direct the police

concerned with police at his expenses to cause removal of the fence through Court Amin for the enforcement of the prohibitory injunction decree. Needless to say, the D.Hr is entitled to the permanent injunction decree which runs with the land not only against the J.Drs and their men but also any persons claiming through them. No order as to costs.

13) As a sequel, miscellaneous petitions if any pending in this Civil Revision Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.02.08.2016
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