

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.5076 OF 2011

ORDER:

The Judgment Debtor (for short, 'the J.Dr.') No.1 among two Judgment Debtors/ defendants(for short, 'J.Drs') of E.P.No.135 of 2007 in O.S.No.535 of 1997 on the file of the learned Principal Junior Civil Judge, Visakhapatnam, preferred the present revision aggrieved by the order dated 04.07.2011 with the contentions in the grounds of revision that the order of the executing Court is illegal, that the lower Court failed to see that the petition is not maintainable, that the Decree Holder/ plaintiff(for short, 'D.Hr.') not adduced any evidence, that the J.Drs made constructions after dismissal of suit of the plaintiff for permanent injunction only on which ground the petition has no basis, hence to set aside the order of the trial Court impugned herein by allowing the revision.

2. The case of the D.Hr. is that he filed a suit O.S.No.535 of 1997 for a mandatory injunction to remove the unauthorized structures i.e. latrine, gate and compound wall shown as A & B in the plaint schedule property and also for permanent injunction restraining the J.Drs. from interfering with the peaceful possession and enjoyment of the D.Hr. over (EFBC of Commissioner's report) the vacant place situated adjacently towards western side of his house, that the said suit was partly decreed on 01.09.1999 granting relief of the mandatory injunction refusing permanent injunction, thereafter, he preferred an appeal in A.S.No.122 of 2000 to set aside the decree and judgment and the appeal was disposed on 30.04.2004 by the learned IX Addl. District Judge, Visakhapatnam by granting relief of the permanent injunction also. In spite of the decree in favour of the D.Hr., the J.Drs. raised some constructions as stated in the suit in the vacant place situated to the

west of the D.Hr's building and using the same as ingress and egress. The J.Drs. contested the Execution Petition stating as soon as the decree and judgment, he removed the RCC sheet roof rested upon the compound wall of the house of the D.Hr. and after dismissal of the permanent injunction on the advice of the then counsel, the J.Drs. have raised constructions but the D.Hr. keeping quiet all these days, out of jealousy, preferred the appeal. The D.Hr. filed E.P.No.135 of 2007 for arrest and detention of the J.Drs. into civil prison or by the attachment of the property or by both for alleged disobedience on 10.07.2007 by the J.Drs., by constructing compound wall and latrine in south side of plaint/ decree schedule.

3. The trial Court on hearing both sides and perusing the evidence on record only of J.Dr's side R.Ws.1 to 3 and Exs.R.1 to R.3 and by treating no value to P.W.1(D.Hr's) evidence in chief affidavit for not appeared to face cross-examination; partly allowed the petition by directing for arrest and detention of the J.Dr.No.1 to civil prison and dismissed against the J.Dr.2 being lady, holding that the suit was already contested heavily by both sides and rights of the D.Hr. were already determined by the Courts in respect of the disputed property, therefore the J.Drs. now cannot be permitted to canvas against the decree and judgment and there is no substance in the contentions of the J.Drs. in the petition.

4. Heard both sides and perused the material on record.

5. When it is the positive case of J.Drs. that the construction in the vacant site is after trial Court's judgment and decree while granting mandatory injunction in refusing prohibitory injunction and it is false for D.Hr. to say on 10.08.2007 constructed compound wall and latrine.

There is no notice even given after 10.08.2007. The Execution Petition filed was in September, 2006 about two years after the lower appellate Court's judgment and decree granting mandatory injunction also. There is evidence of J.Drs. through R.Ws.1 to 3 and Exs.R.1 to R.3. The D.Hr. has to prove that the J.Drs. willfully disobeyed the permanent prohibitory injunction. There is no specific pleading in Execution Petition and no specific evidence even. The D.Hr. even filed chief affidavit, did not choose to face cross-examination and thereby treated his evidence with no value. The executing Court totally went wrong without basis and factual foundation in ordering arrest and detention of J.Dr.No.1 of alleged violation of prohibitory injunction without even a finding as to on what date and in what manner the alleged violation of injunction taken place. Hence, the impugned order of the lower Court is not sustainable.

6. In the result, the revision is allowed by setting aside the order of the lower Court impugned herein in E.P.No.135 of 2007 in O.S.No.535 of 1997 on the file of the Principal Junior Civil Judge, Visakhapatnam. It is made clear that the D.Hr. is entitled to file fresh Execution Petition, if there is a fresh cause of action pursuant to the permanent prohibitory injunction relief, for any violation of the same by disobedience.

7. Consequently, pending miscellaneous petitions, if any, in this revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:20.09.2016
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