

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos. 4791, 4860 and 4895 of 2016

COMMON ORDER:

1) Aggrieved by the orders passed in E.A.No.64 of 2015 in O.E.P.No.44 of 2015 in O.S.No.128 of 1996 on the file of the I Additional Junior Civil Judge, Madanapalle, wherein a direction was given to the Sub-Inspector of Police, II Town Police Station, Madanapalle, to provide police aid in implementing the decree passed in O.S.No.128 of 1996, all the three Civil Revision Petitions are filed.

2) Since the issue involved in all the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

3) For the sake of convenience, the parties hereinafter referred to as arrayed in E.P.No.44 of 2015.

4) The decree holder filed O.S.No.128 of 1996 seeking permanent injunction. Pursuant to a compromise arrived at between the parties to the suit, the said suit was compromised and a Lok Adalath award came to be passed on 27.06.1998, which is as under:

“1. The defendants 3 to 5 have filed a suit in O.S.No.139 of 1993 for partition of 3/5th share in suit survey No.509/4 of B.Kopalle Revenue Village, measuring 5.26 cents against the plaintiff herein and also defendants 1 and 2 and whereas both parties including defendants 1 to 5 and plaintiff have

compromised the matter, whereunder the Plaintiff Union paid Rs.1,32,000/- to the defendants in O.S.No.139 of 1993 on the file of the Senior Civil Judge, Madanapalle and got the compromise recorded and this became entitled the plaintiff schedule property excluding one kunta located on the South West Corner of suit survey number.

2. The defendants have no objection for passing a decree as prayed for without costs granting permanent injunction in favour of the plaintiff in respect of the plaint schedule property except one kunta of land located on the South-West corner of the suit schedule property.

3. In case the defendants commit any breach of the terms and conditions of the compromise petition, the plaintiff will be at liberty to take police aid and enforce this decree through process of law.”

5) About 17 years ie. on 18.07.2014 the decree holder filed E.P.No.44 of 2015 on the file of the I Additional Junior Civil Judge, Madanapalli alleging that the judgment debtors are trying to encroach the E.P. schedule property. The decree holder also lodged a written report against the judgment debtors before the Sub-Inspector of Police, Madanapalle II Town Police Station, who insisted the decree holder to obtain police aid through the Court for according protection as per the Lok Adalat Award. It is the case of the decree holder that the judgment debtors have violated the terms and conditions of the Lok Adalath award.

6) A counter came to be filed opposing the same. The present E.P. is still pending consideration. While things stood thus, the decree holder filed E.A.No.64 of 2015 seeking a direction to the police to accord police aid to implement the Lok Adalath award in O.S.No.128 of 1996. It is to be noted that on 23.08.2016 the I Additional Junior Civil Judge, Madanapalle, issued an official memo directing the Sub-Inspector of Police, II Town Police Station, Madanapalle to give police protection for implementing the Lok Adalath award passed in O.S.No.128 of 1996. On 16.09.2016 the Court Amin was directed to take assistance of a qualified surveyor for implementing the decree passed in O.S.No.128 of 1996. Challenging the orders passed in E.A.No.64 of 2015, the present Civil Revision Petitions are filed.

7) It is to be noted that O.S.No.128 of 1996 came to be decided in the year 1998 pursuant to a compromise arrived at between the parties. Nearly 17 years later the decree holder made an application seeking action against the judgment debtors for violating the orders passed by Lok Adalath in the year 1998. The said E.P. is still pending consideration. The Court has not given any finding as to whether there is any violation of the terms and conditions of the award passed by the Lok Adalat in the year 1998. Without giving any finding or deciding the E.P., the trial Court passed orders in E.A. for police protection for implementing the award. The question of passing orders in E.A. filed for police protection would arise only after deciding the E.P. filed for violating

the terms and conditions of the compromise decree. Without deciding the same the trial Court ought to have issued directions to the police and Court Amin for protection and implementation of the award.

8) Issue identical to the case on hand came up for consideration before this Court in *B.Rama Krishna V. M.Naga Raju*¹. It was a case where respondents 1 to 3 obtained a decree of perpetual injunction against the revision petitioners and others. The respondents also filed an application seeking police protection alleging that in spite of the decree of injunction the revision petitioners and others are trying to interfere with their possession and are trying to dispossess them from the plaint schedule property through hired gundas. The trial Court allowed the said application and granted police protection. Challenging the same, the above revision came to be filed. After considering the authorities on the subject, this Court held as under:

“9. After a decree for perpetual injunction is passed against him if the judgment debtor in that decree violates that decree, the remedy open to the decree holder is only to file a petition under Rule 32 of Order 21 CPC. Since the court under [Section 38\(3\)](#) of Specific Relief Act can grant a decree of perpetual injunction when the defendant 'invades' or 'threatens to invade' the right of the plaintiff and since Rule 32 of Order 21 CPC lays down that any 'willful disobedience' of a decree of perpetual injunction results in detention in prison, question whether the J.Dr in a decree for perpetual injunction has willfully invaded or threatened to invade the possession of the decree holder is a matter to be judicially

¹ 2006 Law Suit (AP) 804

determined by the Court. Question of implementation of a decree for perpetual injunction cannot be left to be decided by the police. In J. Jagannath Reddy vs. L.Laxmi Devi it is observed that if some body complains to the police that other persons are trying to trespass into their property or are trying to commit any offence in relation to the possession of their property, the police may take action according to law, and as an order in the nature of injunction, positively protecting the possession of a party to the case, is an executable order, it has to be dealt with in accordance with law under Order 21, Rule 32 CPC, and so granting protection under Section 151 CPC to 'enforce a decree of perpetual injunction' is unknown to law. The same view was taken in Goli Kota Reddi v. Goli Rajagopal Reddy."

9) From the judgment of the learned single Judge of this Court referred to above, it would be clear that the possession of the decree holder and violation of any decree has to be determined judicially by the Court. Without deciding the same, implementation of decree for perpetual injunction cannot be left to be decided by the police. If there is any complaint with regard to trespass or destruction to the property, the police may take action according to law. Since the order which is now sought to be passed is in the nature of injunction positively protecting the petitioner is an executable order, it has to be dealt with in accordance with Order 21 Rule 32 of C.P.C. and granting protection pending E.P. may not be correct. Hence, the orders passed in E.A. are liable to be set aside. At this stage it is brought to the notice of the Court that the possession of the property has already been delivered to the decree holder on 21.09.2016. It is also to be noted that third parties, who are claiming right over the property have also filed applications

impleading themselves in the execution petition which is still pending consideration before the trial Court. In view of the above, the decree holder to whom the property is said to have been delivered shall not alienate the property or alter the nature of the property till disposal of the E.P. The trial Court is directed to dispose of the E.P. and the third party claims etc. together as early as possible, preferably, within a period of three to six months, in accordance with law.

10) With the above direction, all the Civil Revision Petitions are disposed of with the above direction. There shall be no order as to costs.

11) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

20.12.2016

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JUSTICE C. PRAVEEN KUMAR

