

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.194 of 2010

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful respondents-plaintiffs is directed against the judgment dated 08.10.2009 of the learned Senior Civil Judge, Narsapur, passed in CMA.no.6 of 2009.

1.1 By the said judgment, the learned Senior Civil Judge while allowing the said appeal filed by the appellants-defendants set aside the order and decretal order, dated 06.05.2009, of the learned Principal Junior Civil Judge, Narsapur, passed in IA.no.405 of 2004 in OS.no.793 of 2003.

1.2 IA.No.405 of 2004 is filed by the petitioners-plaintiffs under Order XXXIX Rule 2(A) and Section 151 of the Code of Civil Procedure, 1908, ('the Code', for short), requesting to attach the property of the defendants, that is, the land, Coconut Trees, plantation Crop in R.S.No.55/3 (as the house property was demolished and removed after the filing of this contempt) and also to punish the respondents-defendants by sending them to civil prison for their wilful and intentional disobedience of the injunction order dated 30.12.1999 granted in IA.no.1739 of 1999 in the said suit.

2. I have heard the submissions of Sri K. Mahipathi Rao, learned counsel appearing for the revision petitioners-plaintiffs and of Sri P. Durga Prasad, learned counsel appearing for the respondents-defendants.

2.1 The parties shall hereinafter be referred to as the plaintiffs and the defendants for convenience and clarity.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiffs, who are the father and son, brought the suit against the defendants for a perpetual injunction restraining them from discharging drainage water from the newly dug salt water Well and other polluted water into 'IJKL' lane and not to plant three Coconut plants at points 'MNO' contrary to the terms of the partition deed, dated 31.05.1950, and for a mandatory injunction directing the defendants to close the newly dug salt water Well, which is causing nuisance to the plaintiffs, and remove the newly planted Coconut trees at points MNO and also close the illegally opened doorway and for other reliefs. In the said suit, the plaintiffs filed IA.no.1739 of 1999 under Order XXXIX Rule 1 read with Section 151 of the Code for granting, pending disposal of the suit, a temporary injunction restraining the respondents and their men from letting out drainage water of any kind from their newly dug salt water Well and other waters into the lane IJKL of the plaint plan no.3 and to also restrain them from making any further constructions of any type in the IJKL lane and to grant a temporary mandatory injunction for removal of 3 coconut plants at points MNO, which are newly planted, contrary to the terms of the partition deed. The said application was resisted by the defendants. The trial Court allowed the said application by its orders dated 19.02.2001. Be that as it may. The subject application (IA.no.405 of 2004) was filed by the plaintiffs against the defendants to punish them as per law for disobedience of the interim injunction order dated 30.12.1999 granted in the afore-stated application. The operative portion of the said interim order of injunction reads as under: - '...the petitioners are granted only ad interim injunction restraining the respondents from letting out the drainage water from their newly dug salt water Well into IJKL portion of the plaint plan no.3 and also restraining the respondents from making any constructions in IJKL portion of plaint plan no.3 till 20.01.2000.' The 1st

respondent filed a counter resisting the said application of the plaintiffs. On merits, the trial Court ordered arrest of the defendants for their disobedience of the orders extracted supra and directed that they shall be sent to civil prison for a period of three months. Aggrieved thereof, the unsuccessful defendants preferred the afore-stated CMA before the Court of the learned Senior Civil Judge at Narsapur. On merits and by the judgment impugned in this revision, the learned Senior Civil Judge, Narsapur, allowed the CMA. Therefore, the aggrieved plaintiffs are before this Court.

4. Before proceeding further, it is necessary to refer to the contentions of the parties.

The case of the plaintiffs is that the trial court granted interim injunction order on 30.12.1999 in favour of the plaintiffs and against the defendants and that the said order was duly served on the defendants on 01.01.2000 and that despite the fact that the said interim injunction orders are in force, the defendants continuously disobeyed the said injunction orders passed by the Court and that therefore, the plaintiffs filed the petition for taking appropriate action against the defendants. The case of the 1st defendant, who alone filed counter, in brief, is this: - 'The Court granted interim injunction order is true. However, the plaintiffs have no exclusive rights over IJKL lane. It is a common lane. The defendants are also having joint rights in the said lane. The plaintiffs are not entitled to dispute the joint rights of the defendants over the said lane and the plaintiffs cannot contend that the defendants have nothing to do with the said lane. The suit is filed by suppression of facts. The 1st defendant never violated injunction orders of the Court in any manner. No nuisance or inconvenience was ever caused to the plaintiffs for their enjoyment of the IJKL lane and the joint rights in the said lane. There are no merits in the request of the plaintiffs. The request of the plaintiffs is not bona fide.'

5. At the hearing, learned counsel for the plaintiffs would contend as follows:

“The defendants categorically admitted that an injunction order was granted and that the same was duly served upon them. The 1st defendant alone filed a counter and the defendants 2 and 3 did not even file a counter. The photographs and the Commissioner’s report clearly disclose acts of violation of the injunction order, namely, letting out of drainage water from the salt water Well. There is adequate proof of violation of injunction order. Hence, the defendants are liable to be punished by sending them to civil prison as sought for by the plaintiffs. The Court below ought not to have interfered with the order of the trial Court. The order impugned is liable to be set aside.

6. In reply, the learned counsel for the defendants pointed out that the trial court did not record a categorical finding that the defendants had either let out any drainage water from the salt water Well into the lane or made any constructions in the lane in violation of the injunction orders; in deed there is no proof in that regard; the plaintiffs failed to adduce any evidence and establish that the defendants had either let out any drainage water from the salt water Well into the lane or made any constructions after the injunction orders are granted and that therefore the revision is devoid of merit.

7. Order XXI Rule 32 (1) of the Code insofar as it is relevant, reads 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."

8. The party who invokes Order XXI Rule 32 of the Code has to establish by cogent evidence wilful and conscious acts of violation and disobedience of the orders of injunction on the part of the opposite parties, the alleged violators. It is pertinent to note that before the trial Court, no oral and documentary evidence was adduced. The reliefs of attachment of the property of the defendants and the arrest of the defendants for their detention in civil prison, which are sought for by the plaintiffs, for violation of the interim injunction dated 30.12.1999 will have serious consequences, if granted. Unless the averments with regard to the acts of violation, with necessary details, are pleaded and established by adducing the required standard of evidence, the plaintiffs are not entitled to seek an order for the arrest of the defendants and their detention in civil prison. The plaintiffs in fact relied upon a Commissioner's report with plan and also photographs. The trial Court while allowing the petition of the plaintiffs observed as under: - 'Perused the positive photographs filed by the plaintiffs and taking the same into consideration, this Court came to a conclusion that even after passing of the injunction orders and serving the same on the respondents on 01.01.2000 the respondents did not stop to let the drainage water into the IJKL Lane. In addition to that the Advocate Commissioner filed his second report on 06.10.2004 that itself clearly reveals that the respondents did not stop the letting of the drainage water into the IJKL joint lane.' [Reproduced verbatim]. Neither the photographs nor the Commissioner's report with plan, if any, are marked. The order of the trial Court does not disclose whether the defendants filed any objections to the Commissioner's report. As rightly contended by the learned counsel for the defendants, the photographs may show stagnated water but do not disclose as to when the said water was let out and whether the said water

collected in the lane, if any, is rain water or drainage water let out from the salt water Well got dug up earlier by the defendants. It is the admitted case of the parties that the defendants are entitled to let out rain water into the lane. Further, as also rightly contended, the presence of water in the lane at the time of the visit of the Commissioner may only disclose the fact, viz., the presence of the water in the lane at the time of his visit and nothing more. The mere presence of water in the lane does not establish as to when and by whom the water, which was present in the lane, was let out and whether such water is drainage water or rain water. Further it is fairly submitted before this Court that by now the salt water Well was closed and it is not in existence. Therefore, in the considered view of this Court, the trial Court passed erroneous orders ordering arrest of the defendants without cogent evidence and necessary proof of the alleged acts of violation of interim injunction orders. Viewed thus, this Court finds that the appellate Court had rightly reversed the order of the trial Court as the plaintiffs failed not only to prove the violation of injunction order but also that such violation, if any, is deliberate and wilful.

9. Having regard to the nature of the relief claimed and the serious consequences of the granting of the relief, this Court is of the considered view that unless the acts of violation and nature of violations are specifically pleaded with necessary details and are established by adducing the required standard of evidence, it is not permissible, just and fair to order arrest and detention of the defendants in civil prison.

10. On the above analysis, this Court holds that the learned Senior Civil Judge, Narsapur, is justified in passing the order impugned in this revision and that the said order brooks no interference.

11. In the result, the Civil Revision Petition is dismissed.

Miscellaneous petitions pending, if any, also shall stand dismissed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

17th January, 2017
Vjl

