

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5207 OF 2011

ORDER:

Heard learned counsel for revision petitioners, who are no other than the decree holders of the suit for permanent injunction decreed in their favour by the I Additional Junior Civil Judge, Eluru, dated 21.06.2002 in O.S.No.1099 of 2000, against four defendants who are the respondents herein of whom during pendency of the execution petition under Order XXI Rule 32 CPC filed by the decree holder against them in E.P.No.564 of 2003, the 1st Judgment Debtor shown died and the LRs are on record is mentioned and that is also reflected in the impugned order herein of the lower court dated 08.03.2010 in Para 4 and notice ordered to the remaining judgment debtors/respondents 1 to 3 in the revision even served they failed to attend, hence, taken as heard.

2. Perused the impugned dismissal order dated 08.03.2010, from the prayer for violation of permanent injunction for the relief of arrest of the judgment debtors and for recovery of execution costs by execution of the decree.

3. The main contention of the counsel for revision petitioners is that even there is a commission report in their favour of the Commissioner appointed in E.A.No.2080 of 2004 during pendency of the E.P. at their instance and the

Commissioner also stated that subsequent to the decree in the suit dated 21.06.2002, the E.P.No.564 of 2003 filed for arrest of the judgment debtors for violation of injunction by making constructions, a perusal shows the walls of the Mangalore Tiles House of the Judgment Debtor seems recently constructed to say two to three years prior to the visit by the Commissioner on 22.07.2008.

4. It is the submission that once there is a clear violation as sought by the decree holders against the judgment debtors of the permanent injunction decree and also the Commissioner report clearly finding place the same of a construction subsequent to the decree, the dismissal of the execution petition by the lower court is unsustainable.

5. Having regard to the above and from perusal of the same, as the impugned order not properly reflected particularly in Para 12, the observations of the Commissioner in the report while discussing the evidence from Paras 8 to 12 including from the examination of the Commissioner of the report exhibited as Ex.X-1, the impugned order is set aside and the matter is remitted back to the lower court for fresh disposal by restoring the execution petition and by ordering notice to the judgement debtors afresh. Needless to say, the trial court shall give early disposal after service within three months from the date of receipt of this order from the rehearing with reference to the evidence already on record.

6. Accordingly and with the above direction, this civil revision petition is allowed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed as consequence. There shall be no order as to costs.

Dr.B.SIVA SANKARA RAO,J

31.10.2017
SS

