

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP MP No.539 OF 2017

IN

CRP MP No.7279 OF 2016

IN/AND

CIVIL REVISION PETITION No.5614 OF 2016

COMMON ORDER:

Petitioner is the decree holder in O.S.No.194 of 2007 on the file of the Junior Civil Judge, Chintalapudi. Respondent is his brother. He filed the said suit for perpetual injunction against the respondent. The respondent engaged a counsel but did not contest the suit. The suit was, therefore, decreed on 19.06.2008. No appeal was preferred against the said judgment.

2) Thereafter, E.P.No.60/2011 was filed by the petitioner against the respondent alleging that the respondent was trying to trespass into the schedule land and that he was not allowing the petitioner to take the crop from the land. He also alleged that he lodged a police report but the Police did not take action stating that it is a civil matter. He, therefore, sought that the respondent be committed to civil imprisonment.

3) Notice was served on the respondent, but he did not file counter. So, he was set *ex parte* on 22.04.2013. Later, he filed E.A.No.95/2014 to set it aside and it was allowed subject to condition. Even thereafter he did not file any counter. Both parties adduced oral evidence in the Court below. Petitioner himself examined as P.W.1

while respondent examined RWs 1 to 5. In his evidence, the petitioner reiterated his contention that the respondent was trying to trespass into his land and that he was proclaiming in the village that he will not allow decree holder to take crop raised in the land by the petitioner.

4) Respondent examined himself as R.W.1 and insisted that he was in exclusive possession of the land derived from his father and that he never disobeyed the injunction. He also denied the suggestion that he committed theft of crop from the schedule land.

5) The Court below held that the petitioner did not examine any third party to show that the respondent had disobeyed the order of the Court and that he has not stated on which date the respondent tried to enter the land and on which date he tried to take away the paddy crop. It therefore held that there is no material to show that there is any willful disobedience on the part of the judgment debtor of the decree passed by the Court.

6) Assailing the same, this Revision is filed.

7) In CRP MP No.7279 of 2016, this Court granted Police Aid in favour of the petitioner.

8) CRP MP No.539 of 2017 is filed to vacate the order by the respondent stating that the suit schedule property is joint property of

the petitioner and respondent and that it was an assignment granted in favour of his late father. He contended that after the death of his father, the property devolved on himself as well as the petitioner, but suppressing this fact, he obtained pattadar pass book and title deed with an intention to deprive him of his half share in the property and his possession and enjoyment of the same. He asserted that he was in continuous possession of the schedule property as Kartha of the joint family property.

9) These pleadings of the respondent indicate that he continued to be in possession of the suit schedule property.

10) In the suit, the petitioner had clearly pleaded that he was in exclusive possession of the property and had also filed pattadar passbook to prove his possession and enjoyment of the said land. This material was relied upon to grant relief of perpetual injunction in favour of the petitioner against the respondent. Once, the decree is granted accepting the possession of the petitioner, it is not open to the respondent to state that he continued to be in possession of the property.

11) Therefore, his very deposition in the Court below that he is in possession of the suit schedule property is sufficient to show that he had disobeyed the orders of permanent injunction obtained by the petitioner against the respondent. The party, who suffers a decree,

cannot disobey it without taking recourse to challenge the decree and getting it set aside in a superior Court. The entire approach of the lower Court appears to be clearly perverse overlooking this fundamental aspect of the matter.

12) Therefore, the CRP is allowed; the order dated 11.08.2016 in E.P.No.60/2011 in O.S.No.194/2007 of the Junior Civil Judge, Chintalapudi, is set aside; the said EP is allowed; and the respondent is once again restrained from entering the land and disobeying the order of permanent injunction granted in favour of the petitioner on 19.06.2008 in O.S.No.194/2007. He is also sentenced to detention in civil prison for a period of one week subject to payment of batta of Rs.300/- per day by the petitioner.

13) Accordingly, CRP No.5614 of 2016 is allowed and CRP MP No.539 of 2017 is dismissed. No order as to costs.

14) As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Justice M.S.Ramachandra Rao

3rd March, 2017.

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