

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

C.R.P.No. 721 OF 2017

DATED 17TH FEBRUARY, 2017

Between:

Yernena Satyanarayana ... Petitioner

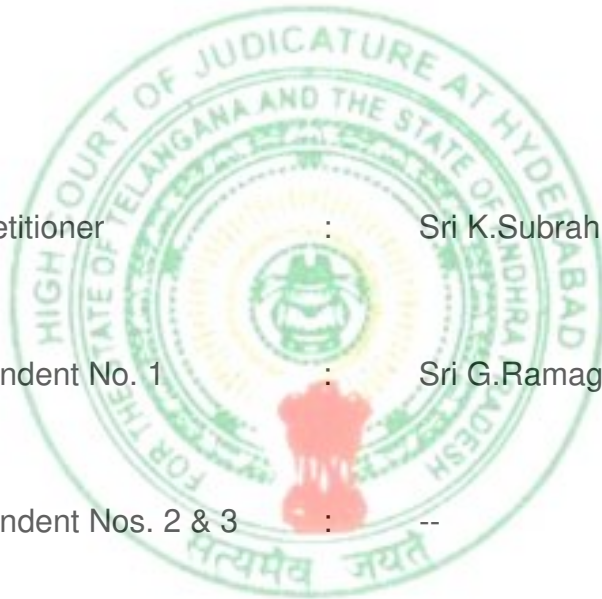
AND

Boppa Anantha Rao and others ... Respondents

Counsel for the petitioner : Sri K.Subrahmanyam

Counsel for respondent No. 1 : Sri G.Ramagopal

Counsel for respondent Nos. 2 & 3 : --



THE COURT MADE THE FOLLOWING

ORDER:

This civil revision petition arises out of order dated 17-11-2009 in I.A.No. 484 of 2009 in O.S.No. 1475 of 2001 on the file of the Court of II Additional Junior Civil Judge, Visakhapatnam (for short, 'the trial Court').

2. I have heard Sri K.Subrahmanyam, learned counsel for the petitioner, and perused the record.

3. Respondent No. 1 filed O.S.No. 1475 of 2001 against the petitioner for permanent injunction. The trial Court decreed the suit. The said decree and judgment were reversed by learned IX Additional District Judge, Visakhapatnam (for short, 'the lower Appellate Court'), and the same were confirmed by this Court in S.A.No. 739 of 2007. The effect of these proceedings is that the respondent No. 1 did not ultimately succeed in the legal proceedings initiated for securing decree for injunction. The defendants in the suit filed I.A.No. 484 of 2009 under Section 94 (e) read with Section 151 of the Code of Civil Procedure (for short, 'C.P.C.') to order arrest and detention of respondent No. 1 for his failure to vacate shop room, forming part of the suit schedule property. It is the pleaded case of the petitioner that in the guise of decree for injunction granted in his favour by the trial Court, respondent No. 1 has occupied the aforementioned shop room and has failed to vacate the same though the lower Appellate Court has made an observation that respondent No. 1 has a moral obligation to vacate the premises. The trial Court, however, dismissed the said application.

3. Having considered the aforementioned facts of the case, I am of the opinion that the trial Court has rightly dismissed the interlocutory application. Section 94 of C.P.C. empowers the Courts to exercise certain powers in order to prevent the ends of justice from being defeated. These powers are exercisable

when the facts of the case so warranted. This provision, therefore, cannot be invoked in isolation unless the party also satisfies the Court that on the merits of the case any of the measures indicated under Section 94 of C.P.C. has to be initiated by the Court.

4. In the instant case, the petitioner has not obtained any relief in the proceedings initiated by respondent No. 1. As observed hereinbefore, the final result of the legal proceedings commencing with the institution of O.S.No. 1475 of 2001 by respondent No. 1 got terminated against his interest. In other words, though the trial Court has granted decree for injunction in favour of respondent No. 1, eventually the said decree was set aside by the lower Appellate Court and the same was confirmed by this Court. The issue regarding occupation of premises by respondent No. 1 in the guise of decree for injunction was not conclusively adjudicated except an observation made by the lower Appellate Court that respondent No. 1 has a moral obligation to vacate the premises. Therefore, in the absence of any enforceable order or decree granted in favour of the petitioner, he is not entitled to invoke the provisions of Section 94 of C.P.C. At best, the petitioner could have invoked the provisions of Section 144 of C.P.C. for restitution if he was dispossessed based on the *interim* order or decree for injunction by respondent No. 1.

5. In the light of the abovementioned discussion, I do not find any merit in this civil revision petition and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J.

Date: 17-02-2017.

JSK