

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4142 of 2010

ORDER :

Heard both sides.

There are two J.Drs., of which J.Dr.No.2 is the revision petitioner, who impugned the order dated 16.08.2010 in E.P.No.129 of 2009 in O.S.No.608 of 1987 passed by the III Additional Junior Civil Judge, Vijayawada, of the decree in O.S.No.608 of 1987 for the relief of permanent prohibitory injunction along with mandatory injunction.

So far as the decree of mandatory injunction executability is concerned, the limitation is three years from the date of receipt of the decree or its reached finality and later it is unexecutable. So far as the permanent prohibitory injunction concerned, there is no limitation apart from the same runs with land otherwise as per the settled law.

However, so far as the arrest of J.Dr.No.2 for the so called violation of the permanent prohibitory injunction concerned, from the very wording of Order XXI Rule 32 C.P.C. the J.Dr. must have knowledge and having opportunity to obey the decree and willfully dis-obeyed the same, then only he is liable for arrest and detention. From perusal of the prayer in the very E.P. at para-12 speaks to punish J.Dr.No.2 by detaining him in the civil prison for violating the injunction order. Among the three

prerequisites, so far as J.Dr.No.2 concerned, whose arrest sought by detention in civil prison for so called violation of the decree which is not sufficient for the other two prerequisites are opportunity to obey and willfully dis-obeyed. There is no mention in the very prayer at para-12 of the E.P. of wilfully dis-obeyed. In the absence of which, the trial Court should not have been numbered the E.P., leave about the fact that the learned counsel for the revision petitioner/ J.Dr.No.2 says that the said J.Dr. died and even from the interim stay granted against the order of detention as J.Dr.No.2 passed by the lower Court in the E.P. supra impugned in the revision, pending disposal of the revision on 09.09.2010, the interim stay is only for a period of eight weeks and later there is no stay, leave about subsequently could have been executed or the parties even have knowledge. Thereby, the revision is disposed of by left open the remedies to the D.Hr. for any violation to seek afresh including against the legal representatives of J.Dr.No.2, if any.

Accordingly, the Civil Revision Petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:20-11-2017
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