

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 5718 2010

Date :3.8.2017

Between :

Doppa Durga Sankara Vara Prasad
S/o Apparao 41 years
26-4-2, Temple Street, Kakinada, E G District

Petitioner

And

Katakam Venkata Satyanarayana S/o Sreeramulu
47 years
D No. 36-4-37 Jawahar Street
Kakinada and another

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner herein is defendant/judgment debtor. Respondents are plaintiffs/ decree holders. For the sake of convenience parties are referred to as they are arrayed before the trial Court.

2. Plaintiffs filed suit O.S No. 1085 of 2003 on the file of the I Additional Junior Civil Judge, Kakinada praying to grant permanent injunction restraining the defendant from interfering with the right of the plaintiffs to remove the northern wall of the suit property shown as "A B" in the plaint. The suit was dismissed by judgment and decree dated 25.8.2005. Aggrieved thereby, plaintiffs preferred A S No. 157 of 2005 on the file of the III Additional District Judge, Kakinada. The said appeal was allowed setting aside the judgment and decree of the lower Court and decreed the suit as follows:

"1) that suit O S No. 1085 of 2003 filed by the appellants/plaintiffs is hereby decreed permitting the appellants/plaintiffs to remove the northern wall of the property of the appellants/plaintiffs shown as A B in the plaint plan without causing any damage to the property of the respondent/defendant and retain the height of the wall shown as A B in the plaint plan to an extent of 6 to 8 feet and should use it only as a compound wall in future;

2) that the respondent/defendant is hereby restrained to interfere with the said wall and

3) that the party to bear their own costs."

3. Aggrieved thereby, the defendant preferred S.A. No. 12 of 2009 before this Court. This Court by judgment dated 24th September, 2010 modified the judgment and decree passed by the First Appellate Court. The operative portion of the said judgment reads as under:

"Under the circumstances, —

(a) The plaintiffs in O.S. No.1085 of 2003 on the file of the I Additional Junior Civil Judge's Court, Kakinada are permitted to dismantle the existing wall in between the properties of the plaintiffs and the defendant and construct a new wall in its place at their expense without encroaching, in any manner, into the site of the plaintiffs or the defendant on either side of

the existing wall and the wall shall be of a height of 8 feet from the ground level.

(b) Such wall shall be used only as a compound wall in between the properties of the plaintiffs and the defendant.

(c) The plaintiffs shall be permitted to dismantle the existing wall and construct a new wall as directed above only in the presence of an advocate commissioner to be appointed by the trial/executing Court for the purpose.

(d) In case of default of the plaintiffs in this regard, it shall be open to the defendant to approach the trial/executing Court for appointment of an advocate commissioner to have the existing said wall dismantled and new wall constructed as directed above at his expense, which he will be entitled to recover from the plaintiffs,

And

(e) The plaintiffs or the defendant shall have to approach the trial/executing Court similarly whenever any works of maintenance are required for the said compound wall in future.

The judgment and decree in A.S. No.157 of 2005 on the file of the III Additional District Judge's Court, Kakinada shall stand modified accordingly and the second appeal is disposed of accordingly without costs with the above directions."

4 During the pendency of the Second Appeal, plaintiffs filed E.P. No. 718 of 2008 under Order XXI Rule 32 of CPC seeking to arrest and detention of the defendant in civil prison for violating the decree passed. The said claim was contested and on consideration of the rival claims, the trial Court by order dated 29.11.2010 held that the judgment debtor/defendant willfully violated the decree passed in A S No. 157 of 2005 and committed him to civil prison. Aggrieved thereby this revision is filed.

5 This Court by order dated 10.12.2010 granted initially interim suspension of the order dated 29.11.2010 in E.P. No. 718 of 2008 for a period of four weeks and by order dated 21.01.2011 extended the same until further orders.

6. Though notices were served, none appeared for plaintiffs.

7. Heard learned counsel for defendant Sri S.Subba Reddy.

8. Learned counsel for defendant submits that as a consequence to the judgment of this Court in S.A. No. 12 of 2009 the decree passed by the First Appellate Court stood modified and in terms thereof plaintiffs were only entitled to dismantling the existing wall in between the properties of plaintiffs and defendant; such dismantling can only be in the presence of Advocate Commissioner; construct new wall in its place at their expenses without encroaching in any manner into the site of the defendant on either side of the existing wall and the wall shall be of a height of 8 feet from the ground level. However, even before the Second Appeal was considered by this Court, by contending that the decree of the appellate Court is not suspended, the decree holder was seeking to enforce the decree as granted to him and was in the process of demolishing the wall. As the demolition was not in accordance with the decree and was affecting the property of the defendant-petitioner herein, he filed police complaint. It is also the case of the defendant that portion of the wall removed was affecting his bath room, therefore he placed bricks like a wall to protect the bath room. Learned counsel therefore contends that there was no violation of the decree granted in favour of the decree holder in A S No. 157 of 2005. He further submitted that by the time E.P. was considered judgment was rendered by this Court in Second Appeal modifying the earlier decree passed by the First Appellate Court and though this fact was brought to the notice of the trial Court, trial Court, ignoring the same, proceeded with the matter holding the defendant guilty, by referring to the events occurred prior to judgment rendered by this Court in second appeal. According to the learned counsel, the trial Court could not have taken seriously the factum of filing criminal complaint and holding the defendant guilty only on the ground that defendant lodged complaint with the police. Further putting bricks as wall was only to protect the bathroom and was not with an intention to obstruct enforcement of the decree granted in favour of the plaintiffs.

9. Learned counsel for defendant by taking through the deposition of decree holders submits that even according to the decree holders what was alleged is not deliberate obstruction in the process of enforcement of the decree. The subject wall was separating two properties and manner in which the removal of the wall was undertaken by the plaintiffs was only objected.

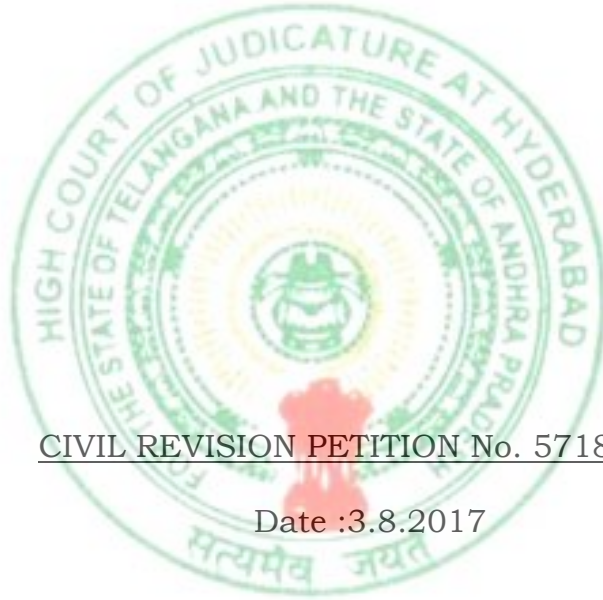
10. These averments of the defendant are not controverted. From the narration of events and assessment made by the trial Court, it appears that mere lodging of complaint before the police or putting up certain bricks on the removed portion of the wall to protect the bath room, cannot be viewed as deliberate or willful violation or obstruction in the process of enforcement of the decree holding the defendant guilty and committing him to civil prison.

11. It is also appropriate to note that the decree passed by First Appellate Court was modified by this Court in the Second Appeal. This Court directed dismantling of wall only in the presence of Advocate Commissioner. Apparently, no Advocate Commissioner was appointed prior to demolition. Further more, learned counsel informs the Court that wall was fully constructed and there are no further differences between plaintiffs and defendant.

12. Having regard to peculiar facts of the case noted above, the order under revision is set aside and accordingly the revision is allowed. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:03-08-2017
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