

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1458 of 2017

ORDER:

1) Aggrieved by the order dated 21.02.2017, passed in E.P.No.33 of 2015 in O.S.No.114 of 1998 on the file of the I Additional Junior Civil Judge, Chittoor, wherein an application filed by the 1st respondent herein under Order XXI Rule 32 of C.P.C. seeking arrest and detention of the second respondent in Civil Prison was allowed, the present Civil Revision Petition is filed under Section 115 of C.P.C.

2) The facts in issue are that O.S.No.114 of 1998 came to be filed by the 1st respondent/ decree holder for declaration of title over the property and for grant of perpetual injunction. The said suit was dismissed. Aggrieved by the same, he preferred A.S.No.159 of 2004 on the file of the IX Additional District Judge, Chittoor, which was allowed on 29.10.2014. It is said that despite passing of the decree, on 06.03.2015, the petitioner herein is interfering with his possession. It is said that due to his interference, the 1st respondent herein unable to raise sugarcane crop in the schedule property. The interference of the petitioner in the schedule property lead to filing of E.A. The affidavit filed in support of the E.P. would show that when the decree holder was clearing the suit land to raise sugarcane crop, the petitioner repeatedly interfered on 06.03.2015 and 17.03.2015, as a result of which the decree holder is unable to raise the sugarcane crop in his land.

3) A counter came to be filed disputing the averments in the affidavit filed in support of the E.P. It is said that the petitioner is in possession and enjoyment of the schedule property by raising various crops till 2012 and due to serious drought prevailing in the area none of them have raised any crops therein. It is said that taking advantage of the decree and judgment in A.S.No.159 of 2004 the decree holder entered into the schedule property. The petitioner never interfered on 17.03.2015 or at any point of time. The decree holder filed the present E.P. only to harass him.

4) The decree holder got himself examined as PW.1 and also examined PWs.2 to 4 in support of his plea. The petitioner examined himself as RW.1.

5) After considering the rival submissions, the trial Court allowed the E.P., committing the petitioner to civil prison for 15 days and issue warrant of arrest on payment of committal batta. Aggrieved by the same, the present Civil Revision Petition is filed.

6) Reiterating the averments made in the counter, the learned counsel for the petitioner would submit that the order under challenge is illegal and incorrect. According to him though the decree holder sought to examine four witnesses, in support of his plea, but strangely requested the Court to eschew the evidence of PWs.3 and 4. It is urged that the evidence of PW.2 does not corroborate the evidence of PW.1. In the absence of any documentary evidence and since the evidence of PW.2 is not

corroborating the evidence of PW.1 he submits that the order under challenge warrants interference.

7) In spite of service of notice, there is no representation on behalf of the decree holder.

8) As seen from the record, the petitioner herein is aged about 77 years. As stated earlier the decree holder examined PWs.1 to 4 to show that the petitioner herein interfered with the raising of sugarcane crop on 17.03.2015. Out of four witnesses, the decree holder requested the Court to eschew the evidence of PWs.3 and 4. Insofar as the evidence of PW.2 is concerned, he admits in his cross-examination that he does not know the schedule property and the extent of the property. He further admits that he is not aware about the petition filed and the relief sought for in the application. He also admits that since last 3 to 4 years the schedule property is kept fallow without raising any crop. However, he denies that no incident happened as suggested to him.

9) From the answers elicited in the cross examination, PW.2 admits that he does not know the schedule property and extent of the property. That being the position he could not have deposed about the trespass. On the other hand, he himself admits that since last 3 to 4 years the schedule property is kept fallow due to drought. As such, the question of decree holder raising sugarcane crop appears to be doubtful. Infact the evidence of PW.2 supports the plea taken by the petitioner in the counter. It is also to be noted that if really there was a violation of the decree and

judgment, nothing prevented the decree holder from lodging a police report. In the absence of any corroborating material to the evidence of PW.1, this Court is of the view that the order under challenge warrants interference.

10) Accordingly, the Civil Revision Petition is allowed setting aside the order dated 21.02.2017 passed in E.P.No.33 of 2015 in O.S.No.114 of 1998 on the file of the I Additional Junior Civil Judge, Chittoor. There shall be no order as to costs.

11) As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

16.06.2017
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JUSTICE C.PRAVEEN KUMAR

