

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1391 of 2014

ORDER:

This civil revision petition is filed under Section 115 CPC challenging the orders dated 06.03.2014 in E.P.No.147 of 2011 in O.S.No.326 of 2007 on the file of the Court of I Additional Junior Civil Judge, Tirupathi.

A perusal of the record reveals that the respondent herein filed O.S.No.326 of 2007 on the file of the Court of I Additional Junior Civil Judge, Tirupathi against the petitioner for perpetual injunction in respect of the suit schedule property. After full fledged trial, the trial Court decreed the suit on 03.03.2008 in favour of the respondent and against the petitioner. The respondent herein filed E.P.No.476 of 2008 under Order XXI Rule 32 CPC for removal of wall constructed illegally. The trial Court allowed the E.P.No.476 of 2008 directing the petitioner herein/ Judgment-debtor No.1 to remove the wall which was constructed by her up to the encroachments made by her, violating the decree of the Court dated 03.03.2008, within one month from the date of order. It is the case of the petitioner that she removed the wall in pursuance of the orders of the trial court.

While things stood thus, the petitioner filed E.P.No.147 of 2011 in O.S.No.326 of 2007 as if the petitioner has not removed the wall. On 06.03.2014 the trial Court allowed E.P.No.147 of 2011 in O.S.No.326 of 2007 holding that the petitioner-J.Dr. herein has encroached the E.P. schedule property after passing of the decree and made illegal constructions and the Judgment-debtor is liable to commit to civil

prison. Feeling aggrieved by the above said orders, the petitioner-decree-holder filed this revision.

Heard both the counsel and perused the material on record.

On careful scanning of E.P.No.147 of 2011, it is found that there is no mention in the E.P.147 of 2011 with regard to the extent of the E.P. schedule property alleged to have been encroached by the petitioner/ Judgment-debtor. In the absence of such a plea in the affidavit filed in support of the E.P., I am unable to understand as to how the trial Court has passed the impugned order as if the petitioner encroached the property of the respondent. The findings recorded by the court below are not sustainable either on facts or in law. If the order of the court below is allowed to stand, certainly it amounts to miscarriage of justice. In such circumstances, I feel that it is a fit case to set aside the order passed by the trial Court and remit the matter to the trial Court for disposal in accordance with law.

Hence, the civil revision petition is allowed setting aside the order passed by the trial Court in E.P.No.147 of 2011 in O.S.No.326 of 2007 and matter is remitted to the trial Court with a direction to dispose of the matter after affording opportunity to both parties. However, the respondent is at liberty to make necessary amendments to the E.P. schedule. As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

T.SUNIL CHOWDARY, J

March 2, 2017.
Rns

