

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5789 of 2011

ORDER:

The revision petitioners are defendant Nos.5 & 6 in O.S.No.593 of 2006 and respondent/J.Dr.Nos.5 & 6 in E.P.No.72 of 2010 on the file of I Additional Junior Civil Judge, Kovvur, West Godavari District, by name Devarapalli Tobacco Board Auction Platform represented by its Auction Superintendent, Tobacco Board and Tobacco Board represented by its Secretary, Guntur respectively. The revision respondents are 3 decree holders/plaintiffs and remaining among defendant Nos.1 to 7.

The suit filed by the plaintiffs supra against the defendants is for the relief of permanent injunction to restrain the defendant Nos.5 & 6 from issuing TBGR licence for the plaint schedule tobacco barans in the name of defendant Nos.1 to 3 instead of plaintiff Nos.1 to 3 and for costs and such other reliefs. The suit was decreed after contest and the decree of the trial Court reads that defendant Nos.5 & 6 are restrained by permanent injunction from issuing TBGR Licence No.17-004-182 and 17-004-184 in the plaint schedule tobacco barans in the name of defendant Nos.1, 2 & 3 instead of plaintiff Nos.1 to 3 and with costs.

It is pursuant to which E.P.No.72 of 2010 was filed. The prayer in Para 12 of said EP is to prosecute and punish the J.Dr.Nos.5 & 6 (defendants/revision petitioners) under Order XXI Rule 32 CPC as they have disobeyed and violated permanent injunction directions by not issuing TBGR Licence Nos.17-004-182 and 17-004-184 in favour of 3rd decree holder/3rd plaintiff on behalf all decree holders and by way of arrest and detention in

civil prison and to direct them to issue the licence in favour of the 3rd decree holder and in implementation of the said decree of the trial Court. The counter of the J.Dr.Nos.5 & 6 from J.Dr.5 adopted by J.Dr.6 particularly from Para 8 apart from repetition of same contest is that the Tobacco Board has not granted TBGR licence/registration to any person as on date with support of TB.Nos.17-004-182 & 17-004-184 and for 2009-10 season. The finding of the lower Court by the impugned order dated 02.11.2011 is that even the J.Dr.5 & 6 contended that they did not disobey the order of the trial Court (decree) as they did not grant TBGR licence to judgment debtors Nos.1 to 3 and they did not violate orders of the permanent injunction, but in the decree there is a direction to issue licence to the petitioner Nos.1 to 3 and the same was not followed by the tobacco board, which has violated the orders of the Court and in the result, allowed the execution petition by directing them to issue TBGR licence in the name of the 3rd decree holder for next period and further directing them to permit the 3rd decree holder to sell the Virginia tobacco raised by her on the platform of J.Dr.5 till issuance of TBGR licence as J.Dr.5 is an organization in directing to give undertaking for the same.

The decree referred above nowhere positively says to issue licence in favour of decree holders/plaintiffs 1 to 3. It is necessary to mention that the very plaint prayer to restrain the defendant Nos.5 & 6 from granting in favour of defendant Nos.1 to 3 tobacco licence instead of plaintiffs 1 to 3, there is no any mandatory injunction direction to issue licence in favour of plaintiff Nos.1 to 3, the decree holders and same is incorporated

in the decree of the plaint prayer without even any positive direction even to say apart from beyond the scope of prayer even granted not challenged by appeal against any such finding as a result that made final to enforce. Once the decree is also covered by the plaint prayer of no positive direction much less any positive relief to grant any tobacco licence positively in favour of plaintiff Nos.1 to 3/deGREE holders, the direction of the executing court as if the decree reads from perusal of the decree for enforcement is unsustainable.

Accordingly and in the result, the order of the lower Court against the revision petitioners is set aside and the remedy if any of the petitioners is otherwise, if at all there is any enforceable decree and the same is violated for no enforceable decree with any positive direction in favour of plaintiffs/deGREE holders Nos.1 to 3 herein to pass such an order, but for if at all violated the negative direction not to grant licence to the J.Drs.Nos.1 to 3.

Having regard to the above, the civil revision petition is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 28.11.2017
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