

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CIVIL REVISION PETITION No.1071 of 2016

JUDGMENT:

With the consent of both the counsel, the main civil revision petition itself is taken up for hearing.

This Civil Revision Petition No.1071 of 2016 is filed challenging the docket orders of the lower Court dated 05.10.2015, 06.11.2015 and 28.12.2015 in Execution Petition No.105 of 2015.

Learned counsel for the petitioner pointed out that decree dated 31.7.2003 issued in Original Suit No.258 of 2001 was for a permanent injunction restraining the defendant and his men and followers from interfering with or making any construction in "A-1 to B-1" marked property as shown in the Commissioner's plan in the plaint. The other relief for mandatory injunction is dismissed.

Later an Execution Petition No.105 of 2015 has been filed seeking the assistance of the Court to punish JDR-defendant for violation of the order passed and for

removal of the construction said to have been made in the portion of property marked, as “A1 to B1”. In this E.P., the impugned docket orders dated 05.10.2015, 06.11.2015 and 28.12.2015 were passed, directing issuance of “delivery warrants”.

Learned counsel for the respondent on the contrary submits that he is unable to execute his decree and constructions have been made contrary to the terms and conditions of the Judgment and the Decree of the lower Court.

This Court, at this stage, cannot go into the merits or de-merits of the submissions of the learned counsel for the respondent. However, there is considerable force in the submissions made by the learned counsel for the appellant in the Civil Revision Petition itself. In the Original Suit a decree of permanent injunction was granted restraining the defendant/respondent from making any constructions in the property marked as “A1 to B1” mentioned in the plaint. Therefore, in the execution petition also, the Decree Holder sought for arrest of JDR for violation of the orders and for removal of the constructions. Despite this prayer in the execution petition and despite the decree being a decree

for permanent injunction, the lower Court ordered “ issue fresh delivery warrant”. Not only was the said order passed on 05.10.2015, the same was also repeated on 06.11.2015 and on 28.12.2015. A delivery warrant cannot be issued in the facts and circumstances of this case, particularly, as the decree is only a decree for permanent injunction. This order is beyond the decree passed and is also not as per the prayer in the E.P. itself.

Therefore, this civil revision petition is allowed and the impugned orders dated 05.10.2015, 06.11.2015 and 28.12.2015 are set aside.

The lower Court is directed to proceed with the execution petition in accordance with law, duly considering the prayers made and the decree that was granted, after hearing both the parties.

Consequently, miscellaneous petitions pending, if any, in this civil revision petition, shall stand closed.

D.V.S.S. SOMAYAJULU,J

Date:08.12.2016
slk