

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.1579 OF 2018

ORDER

This revision is filed by the judgment-debtor against the order and decree dated 9.1.2018 passed by the court of I Additional Junior Civil Judge, Kovvur in E.A.No.8 of 2018 in E.P.No.130 of 2011 in O.S.No.601 and 2006, wherein and whereby, the trial court dismissed the application filed by the judgment-debtor, in seeking to summon the Executive Officer, Gram Panchayat, Pasivedala to produce documents and to give evidence as to the change of ward members and as to the existence of schedule site either in R.S.No.118/2 or in R.S.No.1393/3 and either in 4th ward or 7th (renumbered as 8th ward).

The respondent herein is the decree holder. He filed the suit for permanent injunction over an extent of 527 sq. yards of vacant site in 4th ward, Pasivedala village of Kovvur mandal against the petitioner. By judgment and decree dated 13.12.2010, the suit was decreed and liberty was given to the petitioner herein, to establish his right in the plaint schedule property that it is situate in R.S.No.139/3 of Pasivedala village and to secure its possession through process established by law. Alleging violation of the injunction granted by the court below, the respondent/plaintiff, filed E.P.No.130 of 2011 against the petitioner herein and another. In the said E.P., petitioner herein, filed the present E.A. disputing the identity of property and to summon the Executive Officer for production of record with regard to existence of schedule property. The same was dismissed by the trial court.

The learned counsel for the petitioner submits that the respondent / decree holder, is seeking to punish the petitioner on the allegation of violation of injunction order, which if proved, the petitioner may have to be sent to civil prison. The learned counsel submits that in respect of very same allegation, petitioner has filed criminal case in C.C.No.253/2011 and the same ended in acquittal. He submits that as the petitioner is disputing the identity of the schedule property, it is necessary to summon the Executive Officer with records. By summoning the Executive Officer, no prejudice would be caused to the respondent. As the trial court without appreciating these facts, dismissed the E.A., the same requires to be set aside and summons be issued to Executive Officer for production of records and to give evidence.

In the present case, suit was filed for injunction and the petitioner, who is the defendant, ought to have taken all the objections that are available to him in law. The suit was eventually decreed. While decreeing the suit, the trial court has given liberty to the petitioner herein to file a separate suit to establish his claim. As per the submissions of the learned counsel for the petitioner, petitioner filed a suit and it was dismissed and the even appeal filed also ended in dismissal. Apart from that it is for the respondent – decree holder to prove the alleged violation of injunction in his favour. The trial court has found that petitioner has filed similar applications earlier and they were dismissed. Considering these facts and circumstances, the trial court, in my considered view, rightly dismissed application.

For the foregoing reasons, I do not find any illegality or infirmity in the impugned order and the revisions is devoid of any merit and the same is accordingly dismissed at the stage of admission.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:09—03—2018

AVS

