THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 2308 of 2018

ORDER:

This civil revision petition is arising out of the Docket Order dated 19.03.2018 passed in E.A.No.13 of 2018 in E.P.No.6 of 2018 in O.S.No.17 of 1992 by the learned Principal Junior Civil Judge, Madhira.

2. The revision petitioners are third parties to the E.P. proceedings. The respondents 1 to 3 are the plaintiffs who filed the suit O.S.No.17 of 1992 on the file of Principal Junior Civil Judge, Madhira, for permanent injunction against respondent No.4 and the suit was decreed on 23.09.1997. Aggrieved by the decretal order dated 23.09.1997, the respondent No.4 (Judgment debtor) preferred an appeal A.S.No.10 of 1997 and the appeal was dismissed on 29.09.2000. No second appeal was preferred against the said judgment in the appeal suit and thereby the decree passed in O.S.No.17 of 1992 has become final.

3. Respondents 1 to 3 have filed E.P.No.6 of 2018 under Order XXI Rule 32 of Code of Civil Procedure, for the following relief:

> *"Hence in view of the above facts the Hon'ble Court kindly may be pleased to enforce the Decree Dated 23-09-1997 which passed against the Judgment Debtor in O.S.No.17 of 1992 by way of attachment of his properties and by way of putting him into the Civil Prison and provide Police protection to the Decree Holders and to the Suit Schedule Property in the interest of justice."*

4. During pendency of E.P. proceedings, respondent No.4 tried to interfere with suit schedule property and, therefore, respondents 1 to 3 have filed E.A.No.13 of 2018 on the file of Principal Junior Civil Judge, Madhira, and the same was allowed on 19.03.2018, granting police protection to the decree holders to protect the E.P. schedule property. Aggrieved by the same, the revision petitioners who are third parties to the E.P. proceedings have filed the present civil revision petition.

5. Heard Sri Vedula Venkataramana, learned Senior Counsel appearing for the revision petitioners; and Sri Mummaneni Srinivasa Rao, learned counsel appearing for respondents 1 to 3 (decree holders). None appeared for respondent No.4 (judgment debtor).

6. Learned Senior Counsel for the revision petitioners submits that the revision petitioners, though third parties to the E.P. proceedings, have got interest over the E.P. schedule property. The revision petitioners have filed suit for declaration of title and permanent injunction on the file of I Additional District Judge, Khammam, in O.S.No.25 of 2005 and the same was dismissed on 17.02.2018. Aggrieved by the dismissal, the revision petitioners have filed first appeal before this Court. It is further submitted that the schedule property in O.S.No.25 of 2005 and O.S.No.17 of 1992, for which E.P.No.6 of 2018 was filed, are one and the same and the revision petitioners are claiming their right over the E.P. schedule property.

7. It is the case of the revision petitioners that respondents 1 to 3 herein have filed a suit O.S.No.111 of 1997 on the file of Junior Civil Judge, Madhira, against the revision petitioners, for injunction in respect of the same property, and the suit was decreed on 18.07.2005. Challenging the same, the revision petitioners have filed A.S.No.5 of 2006 before the Senior Civil Judge, Sathenapalli, and the said appeal was allowed on 18.07.2012, by remanding the matter to the trial Court for fresh disposal according to law. It is the further case of revision petitioners that suppressing all these facts, the respondents 1 to 3 herein have filed E.P.No.6 of 2018 for execution of injunction decree in O.S.No.17 of 1992 which was obtained against respondent No.4 and the said suit O.S.No.17 of 1992 is a collusive suit as respondent No.4 is a close relative of respondents 1 to 3. As on today, the suit filed by the respondents 1 to 3 herein in O.S.No.111 of 1997 is pending before the District Munsiff Court, Madhira.

8. Learned Senior Counsel for the revision petitioners submitted that as per Article 136 of the Limitation Act, the E.P. is barred by limitation, as the E.P. ought to have been filed within 12 years from the date of passing of decree. It is his contention that in the instant case the E.P. was filed after about 20 years from the date of decree and, therefore, the executing Court ought to have rejected the E.P. on the point of limitation, but the

executing Court has numbered the E.P., which is illegality apparent on the face of the record.

9. Learned Senior Counsel further submitted that the revision petitioners are in possession of the E.P. schedule property and by virtue of the orders in E.A.No.13 of 2018 granting police protection to the respondents 1 to 3, the respondents are trying to interfere with the possession of the revision petitioners. It is further submitted that the revision petitioners have been agitating their rights before the Court at Madhira for the same property and, therefore, the orders passed by the executing Court granting police aid is illegal. It is further contended that the trial Court has not rendered any reason for granting police protection to the decree holders and even on that count the order granting police aid is liable to be dismissed.

10. Per contra, the learned counsel for respondents 1 to 3 submitted that the E.P. is not barred by limitation in this case in view of the provision under Order XXI Rule 32 of CPC read with Article 22 of the Limitation Act. As a matter of fact, it is the executing Court which has to consider whether the E.P. is barred by limitation or not before numbering the E.P. Even otherwise, the executing Court can, at any point of time, consider the aspect as to whether the E.P. is barred by limitation or not. Referring to the above provisions, the learned counsel contends that the limitation starts whenever there is violation of injunction order. It is the case of

respondents 1 to 3 that respondent No.4 interfered with his possession in the year 2018 and, therefore, they have filed the E.P. and the execution petition is within limitation.

11. Placing reliance on the judgment dated 17.02.2018 in O.S.No.25 of 2005, paragraph 15, the learned counsel for respondents 1 to 3 submitted that the suit filed by the revision petitioners in O.S.No.25 of 2005, against the respondents herein, was dismissed by the District Court, as the revision petitioners have failed to prove their title and possession over the schedule property and, therefore, the revision petitioners are not entitled to raise any objection to the orders passed in the E.P. granting police aid to the respondents 1 to 3.

12. On considering the arguments advanced by both the learned Senior Counsel for the revision petitioners; and the learned counsel appearing for respondents 1 to 3, this Court, however, is not inclined to decide whether the E.P. is within limitation or not for the reason that it is the executing Court that has to decide the aspect basing on the material before it. It is pertinent to note that the revision petitioners are third parties to the E.P. proceedings. As per the provisions under Order XXI Rule 32 CPC, third parties cannot raise any protest or contention before the executing Court except by way of filing claim petitions. When there is established procedure of redressal of grievance, the revision petitioners, who are third party, without filing any claim

petition, have approached this Court contending that they are in possession of the suit schedule property claiming interest over the property in the E.P. filed by respondents 1 to 3 for execution of decree.

13. The execution proceedings in E.A.No.13 of 2018 in E.P.No.6 of 2018 are between the decree holders and the judgment debtor. As far as the order dated 19.03.2018 passed by the trial Court in the said execution proceedings is concerned, the said order cannot be found fault with for the reason that the trial Court has passed the order for execution of decree passed in O.S.No.17 of 1992. If the revision petitioners, who are third parties to the E.P., have any right or claim over the schedule property, they may file a claim petition before the executing Court, and may raise their objections against the police protection granted by the trial Court.

14. The relief granted by the trial Court in the impugned order dated 19.03.2018 reads as under:

> *" ..... it is the duty of the court to protect the possession and title of the petition/DHR and also to implement the perpetual injunction in letter and spirit. It is just and necessary to provide police aid protection to the petitioner/DHR to protect the EP Schedule property. The SHO, Wyra PS is hereby directed to assist the petitioners in implementing the perpetual injunction."*

15. Learned Senior Counsel for the revision petitioners submits that there cannot be a direction to the police to continuously protect the E.P. schedule property against respondent No.4, his men and agents and, therefore, the said direction is illegal.

16. As far as this contention of the learned Senior Counsel is concerned, though the impugned order passed by the trial Court appears to be a blanket order; even otherwise, if there is any difficulty in implementing the said order, the aggrieved party can approach the appropriate forum in that regard. The revision petitioners, being third parties, have no *locus standi* to file a petition against an order passed by the trial Court granting police protection for implementing permanent injunction granted to the decree holders in this case.

17. It is appropriate to refer to the settled legal position in respect of execution of decrees. The executing court could not go behind the decree but if the Court which passed the decree lacked jurisdiction and the decree is nullity, the objection can be entertained by the executing Court.

18. Learned senior counsel for revision petitioners submits that O.S.No.17 of 1992 is a collusive suit filed by respondent No.4. Respondent No.4 is the close relative who is son of maternal aunt's father of respondents 1 to 3 herein. Though the suit was decreed on 23.09.1997, no execution of the decree in the suit has taken place by filing execution petition. Therefore, it is submitted that the suit is collusive.

19. As far as this contention is concerned, the aspect whether the suit is collusive or not cannot be decided by this Court in this revision petition. It is pertinent to

note that an execution petition is in between the decree holder and judgment debtor; and third parties have no place in the execution proceedings except by way of filing claim petition if they have any claim over the E.P. schedule property. Therefore, the executing Court cannot go behind the decree and look into the aspect whether the suit is collusive or not. It is appropriate to refer to the purport of the decision in **Harihar v. Mangla Prasad**[1]:

> *"Where the judgment-debtor disobeys a decree of injunction, he can be dealt with under this rule by his imprisonment or by attachment of his property or by both. But the court has to record a finding that the judgment-debtor willfully disobeyed or failed to comply with the decree in spite of opportunity afforded to him. Absence of such finding is a serious infirmity vitiating the order."*

20. The purport of the decision in **Yashoda Bai v. Gopi Mukund**[2], is as under:

> *"Each breach of injunction is independent and actionable in law making the judgment-debtor answerable. Where there are successive breaches of decree, the judgment-debtor can be dealt with on every such breach and the doctrine of res judicata has no application. The court is expected to take strict view and stern action."*

21. In the light of the above decisions, it can be safely concluded that the judgment debtor is answerable to the cause whenever there is breach of injunction.

22. Learned senior counsel for the revision petitioners relied on Article 136 of the Limitation Act, and submitted that limitation for filing an execution petition is 12 years in a suit for declaration of title and permanent

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[1] AIR 1986 All 9
[2] AIR 2003 Bom 77

injunction. Article 136 of the Limitation Act, 1963, reads as under:

> *136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. - Twelve years.*
>
> *[1][When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:*
>
> *Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.*

23. In the light of the proviso to Article 136 of the Limitation Act, it is obvious that there is no limitation for filing execution petition in cases of perpetual injunction. No period of limitation is prescribed for enforcement of execution of decree for perpetual injunction.

24. Therefore, the third party has no locus standi to object the execution proceedings. The legality of grant of police aid can be challenged by only the respondent No.4-judgment debtor and by none else in the execution proceedings. It is also pertinent to note that the question of limitation is a mixed question of fact and law. It can be decided by the executing Court if an objection is raised by either side or by the Court itself if it has raised any objection with regard to the limitation.

25. In view of the foregoing reasons, this Court is not inclined to interfere with the order passed in execution application granting police aid to the respondents 1 to 3

herein. If the revision petitioners are aggrieved by the said order, they may approach the executing Court for redressal of their grievance by way of seeking appropriate remedy available to them.

26. Having regard to the facts and circumstances of the case, there are no valid grounds to interfere with the orders passed by the trial Court granting police protection for enforcement of perpetual injunction.

27. **IN THE RESULT**, the civil revision petition is dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

24th August, 2018
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THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 2308 of 2018

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