

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

CIVIL REVISION PETITION NO. 3849 OF 2018

ORDER:-

This revision is filed against the order dated.28-06-2018 passed in E.P.No.20 of 2016 in O.S.No.42 of 2009 on the file of the court of Junior Civil Judge, Cheepurupalli.

2. The decree holder has a decree for permanent injunction against the respondent-JDR who is his son. Alleging that the JDR interfered with the peaceful possession and enjoyment of the DHR contrary to the decree passed in favour of the DHR, the above said application was filed seeking arrest. Both the counsel appeared before the lower court and also introduced oral and documentary evidence. After considering the oral and documentary evidence, the court below came to a conclusion that there was a violation of the court order and directed the arrest of the JDR. It is this order, that is now impugned in this revision.

3. This court has heard the learned counsel appearing for both sides.

4. The counsel for the revision petitioner argued that there is absolutely no evidence to show that there is any violation of the court order. It is his contention that mere existence of an order in favour of the DHR is not enough to order for arrest of the JDR. Basing on the judgment of the

learned single Judge of this Court in *Koya Ranga Reddy and Others vs. Koya Narayana Reddy and Others*⁽¹⁾, the learned counsel for the petitioner argued that as the arrest involves deprivation of a personal liberty of JDR, there should be clear evidence to show that there was actual violation of the order passed by the court.

5. In response thereto, the learned counsel for the respondent argued on merits of the matter and about the non filing of the Second Appeal etc., He also filed counter stating that the order passed by the court is a reasoned order.

6. Learned counsel for the petitioner points out that the alleged infraction of the court order took place in the presence of one Bhyeempalli Rama Rao. He points out that the said Bhyeempalli Rama Rao who was supposedly a eye witness to the incident was not examined as a witness. He points out that the police did not register the case despite the complaint which is given as Ex.A-1. A suggestion was also put to the witness that Ex.A-1 is created by him and it is self scribed report which is not issued by the police. He also points out that in his chief-examination the JDR clearly spelt out that he did not disobey any court order. He also states that he did not disobey the order of the court at any point of time. The learned counsel for the petitioner points

¹ 2007(3) ALT 689

that there is no cross-examination of the witness/JDR about the alleged incident that took place on 09-06-2016.

7. This court notices that other than the attempted police complaint, which was returned by the police stating it is a civil dispute, there is no other documentary evidence. The alleged incident took place on 09-06-2016 and that police complaint is given more than 12 days later on 20-06-2016 and the same is also returned by the police. Despite the positive assertion of the JDR that he did not violate any order, there is no effective cross examination. No independent witness particularly Bhyeempalli Rama Rao who is supposed to be an eye witness was examined. Therefore, this court, in line with the decision rendered by the learned single judge of this court, which was referred supra, comes to a conclusion that there is no evidence to show that there was 'actual' violation of the court order entailing an order of arrest of the JDR. In the absence of any positive evidence no order of arrest can be passed. This court is of the opinion that the order dated.28-06-2018 is passed without considering the evidence on record and the law on the subject. Therefore, the order dated.28-06-2018 passed in E.P.No.20 of 2016 in O.S.No.42 of 2009 is set aside.

Accordingly, the Civil Revision Petition is allowed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

07-08-2018
TSNR

