

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.1496 of 2012

ORDER:

Heard Mr.Thota Rama Koteswara Rao and Challa Srinivas Reddy for parties.

The Judgment Debtors (J.Drs.) challenge the order dated 16.03.2012 in E.P.No.149 of 2009 directing issuance of arrest warrant against revision petitioners.

The respondents herein are the Decree Holders (D.Hrs) in O.S.No.133 of 2003. The suit for perpetual injunction filed by them in respect of the following property, which was decreed.

“The decree for Perpetual Injunction in respect of the schedule property which is an extent of Ac.3-76 cents situated in Gangavaram village of Gurazala Mandal and bounded on :

Est: Varangani John

South: PWD Canal

West: Kolla Venkata Rao etc.,

North: Kolla Venkata Rao etc.,”

The respondents, complaining disobedience of the decree for perpetual injunction filed E.P.No.149 of 2009 under Order 21 Rule 11 of Code of Civil Procedure (CPC).

The revision petitioners resisted the execution petition. One of the grounds raised by them is that the suit

schedule decree is not clear and all the boundaries do not tally. In the case on hand, from the defense of revision petitioners, it is clear, they are not mainly joining the issue with respondents/D.Hrs. on the allegation of disobedience of perpetual injunction but justified by showing the property into which the revision petitioners interfered, is not part of the decree schedule. The respondents by adducing oral and documentary evidence have satisfied the Court that the decree schedule, E.P. schedule and interference complained relates to one property. The findings recorded by the executing Court reads thus:

“Therefore, the Survey number in decree and Ex.B2 are not one and same and boundaries in the decree schedule and Ex.B2 are one and same. Therefore, the above citation was attracting to the present case. Moreover R.W.1 categorically admitted in cross examination that the schedule property and E.P. schedule property are one and same. Therefore, it clearly shows that himself admitted that he violated the suit schedule property. Therefore, it is well known proposition that clear boundaries as to the identity of the property prevail over any mistake in the survey number. The property purchased by the D.Hrs 3 and 4 was the property in the suit schedule and the documents relied upon contained the boundaries of the property and it is the same property covered by the registered gift deed dt.21-11-2009. Further R.W.1 (J.Dr.No.2) clearly admitted that it is the same property which covered in Ex.B1 gift deed. Therefore, no dispute with regard to the boundaries. Moreover R.W.1

never said that they have obeyed the decree granting in permanent injunction in O.S.No.133/03. Moreover J.Dr have admitted that he has been in possession and enjoyment over the schedule property. In this connection J.Dr No.1 was not examined and he kept silent. As per the gift deed which based on an unregistered codicil which has not seen the light of the day till the filing of this E.P. further the J.Dr No.2 (R.W.1) admitted in cross examination that his grand mother Balamma revoked previous wills dt.11-7-1981 and 16-10-1988 by executing the last will dt.17-01-2003. Therefore, the codicil dt.30-10-2001 said to be executed by the executant as a additional document to the will dt.16-10-1989 which is already revoked is certainly invalid and void ab initio. On the other hand, the J.Drs have admitted that he is in possession of the suit schedule property. Therefore, he disobeyed the order of perpetual injunction granted by this court in O.S.No.133/03 in respect of the E.P Schedule property and claiming possession of the said property under the guise of the registered gift deed executed both. Therefore, the J.Drs 1 and 2 are liable for detention in civil imprisonment and accordingly issue arrest warrant to the J.Dr. Moreover the D.Hr Counsel stated attachment of their property. But D.Hr counsel did not file the schedule to attach the property. Therefore, the J.Drs 1 and 2 are liable for civil imprisonment for willfully failed to obey the decree dt.17-11-2008 in O.s.No.133/03 on the file of Prl.Junior Civil Judge's Court, Gurazala."

Mr.Rama Koteswara Rao submits that as the appeal was pending, it may have to be appreciated and the interference was not deliberate. The contention is merely referred, and rejected, for the revision petitioners, if have

filed the appeal, they ought to have obtained the orders of stay from the appellate Court. In the absence of orders from the appellate court, the revision petitioners as rightly found by the executing Court cannot and could not have interfered with the possession of respondents/D.Hrs.

Hence, the Civil Revision Petition fails and accordingly dismissed.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 05.09.2018
dv



S. V. BHATT, J

