

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4805 of 2018

ORDER:

Heard the learned counsel for the petitioners and Sri Polavarapu Srinivas, learned counsel for the respondent.

2. This Civil Revision Petition is filed assailing the order dt.07-08-2018 in E.P.No.35 of 2015 in O.S.No.159 of 1992 of the Principal Junior Civil Judge, Puttur, Chittoor District, A.P.

3. Petitioner is the judgment debtor in the said suit which was filed against him by the respondent for perpetual injunction. The suit was dismissed on 20-02-2002 and A.S.No.13 of 2002 filed against it was also dismissed on 07-10-2004 by the Senior Civil Judge, Chittoor. S.A.No.76 of 2005 preferred by respondent in this Court was allowed on 18-02-2005 and the matter was remitted to the lower appellate Court. On remand, A.S.No.13 of 2002 was allowed and permanent injunction was granted on 10-07-2007. The petitioner filed S.A.No.863 of 2007 which was dismissed on 16-11-2007.

4. Alleging that the petitioner has violated the said injunction order, the respondents filed E.P.No.35 of 2015 before the Principal Junior Civil Judge, Puttur under Order 21 Rule 32 CPC to commit him to civil prison for disobedience of the decree passed in O.S.No.159 of 1992.

5. In the affidavit filed in lieu of chief examination, respondent stated that the petitioner was trying to interfere with his possession and enjoyment of the schedule property and was trying to make construction.

6. In his cross examination, respondent admitted as P.W.1 that neither the petitioner nor his family members ever came to the E.P. schedule property from the date of decree till that date. Witnesses P.Ws.2 and 3 examined on behalf of the respondent also stated that the petitioner was only trying to make construction in the property. However, no evidence of any such construction in the form of photographs or anything else is placed on record before the Court below.

7. In the counter affidavit filed by the petitioner to the E.P., he has stated that the E.P. was filed only to blackmail him, that he is old aged person not having any support in the village while the respondent is a powerful person having large number of followers.

8. By order dt.07-08-2018, the Court below allowed E.P.No.35 of 2015 and directed that the petitioner be detained in a civil prison for violating the decree and judgment passed in A.S.No.13 of 2002. In the said order passed by it, it stated that in the cross examination, the petitioner stated that he had right over the E.P. schedule property, that he did not reply to the legal notice Ex.P-1 dt.27-07-2015 got

issued by the respondent, and such non-issuance of reply notice and the above statement proves the guilt of the petitioner.

9. Assailing the same, this Revision Petition is filed.

10. Learned counsel for the petitioner contended that in the light of the statement made in the cross examination of the respondent that the petitioner and his family members never came to the E.P. schedule property from the date of decree till the date of his cross examination, and in the absence of any evidence adduced by the respondent as to any violation by the petitioner by doing a particular act, the Court below erred in allowing the E.P.

11. Learned counsel for the respondent refuted the said contention and placed strong reliance on the conduct of the petitioner in not replying the legal notice Ex.P-1 and in stating in cross examination that he had a right over the E.P. schedule mentioned property as sufficient to allow the E.P.

12. I have noted the contentions of both sides.

13. When the very allegation in the chief examination of P.Ws.1 to 3 is that the petitioner is trying to interfere with the peaceful possession and enjoyment of the respondent and trying to make construction, it is clear that there has been no violation of the injunction decree by the petitioner. The statement made in his cross examination by the respondent that the petitioner and his family

members never came to E.P. schedule property further indicates that no violation of the injunction has been done by the respondent.

14. Mere fact that the petitioner did not issue reply notice to Ex.P-1 legal notice got issued by the respondent does not lead to any presumption that the contents of Ex.P-1 are admitted by the petitioner. Therefore, non issuance of reply notice cannot be a circumstance to allow the E.P.

15. It is not the case of the respondent that any Court declared his title over the E.P. schedule property. It is his case only that he is in possession, and his possession should not be interfered with. Therefore, merely because the petitioner denied the respondent's right over the E.P. schedule property without doing anything further, such as entering the land and doing any activity therein, the Court below could not have found him guilty of violating injunction order.

16. In this view of the matter, Civil Revision Petition is allowed; the order dt.07-08-2018 in E.P.No.35 of 2015 in O.S.No.159 of 1992 of the Principal Junior Civil Judge, Puttur, is set aside and E.P.No.35 of 2015 is dismissed. No costs.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-08-2018
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