

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.3345 OF 2011

ORDER:

Judgment Debtor Nos.1 and 2 in E.P. No.195 of 2005 in O.S. No.595 of 2003 on the file of the Principal Junior Civil Judge, Srikakulam, are the present revision petitioners.

2. Respondent - Decree holder filed E.P. No.195 of 2005 in O.S. No.595 of 2003 under Order XXI, Rule 32 of the Code of Civil Procedure, 1908 (for short 'Code'), requesting the Executing Court to order arrest and detention of Judgment Debtor No.1 in Civil Prison since the judgment debtors are violating the decree of injunction even subsequent to perpetual injunction granted by the trial Court.

3. Heard Sri Tarlada Raja Sekhar Rao, learned counsel for the revision petitioners - judgment debtors, and Sri K.S. Gopala Krishnan, learned counsel for the respondent - decree holder.

4. The learned counsel for the revision petitioners would submit that willful default on the part of the judgment debtors is not proved by the Decree Holder. It is his submission that the decree holder has already filed a theft case of cashew topes, and that, that theft cannot be treated as violation of injunction order. He would also submit that there cannot be two punishments for one violation, even assuming that the judgment debtors have violated the injunction, as

already a crime was registered by the police on the report of decree holder. It is according to him, that only to threaten the judgment debtors, the decree holder resorted to abuse of process of law and filed false police case and also execution petition under Order XXI, Rule 31 of the Code and the executing Court went wrong in allowing the execution petition and ordering the detention of judgment debtor No.1 in civil prison for a period of one month and issuing warrant on payment of process.

5. The learned counsel for respondent would support the order passed by the executing Court.

6. A perusal of the order passed by the Executing Court would reflect that it has carefully analyzed the evidence of PWs.1 and 2 and RW.1 and found that RW.1 made a specific admission that there is cashew tope in the suit schedule property and she has been collecting usufructs, and the said admission itself proves the decree holder's stand that there is willful violation of injunction orders. The Executing Court also referred to the evidence of PW.2 that judgment debtors raised casuarinas plantation in their lands and, thus, that assertion was not disputed during cross-examination of PW.2. The Executing Court also referred to the boundaries described by RW.1 in her evidence. The Executing Court then arrived at the conclusion that despite passing of a decree, the contention of the judgment debtors that they are in possession of the disputed property and cutting the usufruct

itself shows that they are willfully violating the injunction decree passed by the trial Court, and thereby allowed the execution petition.

7. Turning to the submissions made by the learned counsel for the revision petitioners, certainly, it cannot be said that the decree-holder is resorting to secure two punishments to the judgment debtors, one by lodging a police complaint and the other by initiating the present execution proceedings. In fact, the present execution proceedings is one in the nature of getting a preliminary relief in the direction of satisfying the decree. The police complaint lodged by the decree holder can only be construed for the act of cutting the usufruct un-authorizedly which is to be tested by the concerned Court of Judicial Magistrate of First Class. Therefore, there is no merit in that submission.

8. So far as whether the order under challenge suffers from any material irregularity, the said order is not tainted with any material irregularity. The very assertion of the judgment debtors that they are in possession of the petition schedule property and cutting the usufructs and enjoyment of the same since cannot be erased from record, would clinchingly establish willful disobedience of the decree for permanent injunction granted by the competent Civil Court. Therefore, there is no merit in the present revision.

9. Hence, the present Civil Revision Petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision, stand closed.

A. SHANKAR NARAYANA, J

April 11, 2018.
Mgr

