

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

CIVIL REVISION PETITION NO.3393 OF 2018

ORDER:

This Revision is filed under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 05.03.2018 in E.A.No.15 of 2016 in E.P.No.1 of 2016 of the XI Junior Civil Judge, City Civil Court at Secunderabad.

The petitioner herein is the decree-holder in O.S.No.1304 of 1995 on the file of the said Court.

It filed the said suit against the respondents for the following reliefs:-

- (a) The suit against the defendant for permanent injunction restraining the defendants, their agents or any one claiming through them from interfering with the peaceful possession of the suit scheduled property namely 10-2-268 to 270, Essar Apartments admeasuring 2090 square meters in all including its compound wall marked ABC in the sketch plan filed along with this suit situated at West Marredpally, Secunderabad.
- (b) For permanent injunction restraining the defendants, their agents or any claiming through them from interfering with the maintenance, development and upkeep of the 18' approach road marked A D E F G H in the sketch plan-3, and also restrain the respondent from releasing water from their overhead tank into the suit scheduled property and,
- (c) To grant decree of mandatory injunction directing the defendants 1 to 5 to close the ABC compound wall by restoring all the portions they demolished by

reconstructing the compound wall of plaintiff separating the defendants property.

After contest, the said suit was decreed on 13.12.1999 and the decree states as follows:-

1. That the suit of the plaintiff be and the same is hereby partly decreed.
2. That the defendants 1, 2, 4 and 5, their agents or anybody are hereby restrained by way of perpetual injunction from interfering with the peaceful possession of the suit schedule property including its compound wall marked as ABC in Ex.A.19 rough sketch, and also from interfering with the maintenance development and upkeep of the 18 feet approach road marked as ADEFGH in Ex.A.19 rough sketch. The claim of the plaintiff in respect of restraining the defendants from releasing the water from their Overhead tank and also the relief for mandatory injunction directing the defendants 1 to 5 to close the ABC compound wall is dismissed.
3. That the defendants do pay to the plaintiff a sum of Rs.433/- towards the proportionate costs of the suit.

Respondents 1, 2, 4 and 5 preferred A.S.No.31 of 2000 before the Special Judge for the Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, against the said judgment.

On 29.08.2006, the said appeal was dismissed.

Pending appeal, the decree-holder/petitioner filed E.P.No.1 of 2016 under Order XXI Rule 32 CPC to attach the property of the first respondent and also to detain him in Civil Prison alleging that there has been violation of the injunction decree obtained by the petitioner in the above suit.

It was the contention of the petitioner in the E.P. that the son of the first respondent initially parked his vehicle in the open land in the South-Eastern side of the suit schedule property in violation of the injunction order; and later when there was an attempt to clean area of garbage, the first respondent and his two sons picked up a fight with them claiming exclusive possession and ownership of the said land and even filed a police complaint against the members of the petitioners' association with P.S. Marredpally. Thus, according to the petitioner, there was a trespass by the first respondent and his family members. They also alleged that the first respondent also caused damage to the compound wall belonging to the petitioner-association and attempted to illegally occupy part of the suit schedule property by willfully disobeying the decree obtained against him and others.

Counter affidavit has been filed by the respondents refuting the said contention.

Petitioners then filed E.A.No.15 of 2016 in E.P.No.1 of 2016 seeking directing to the Station House Officer, P.S. Marredpally to provide protection to enable the Managing Committee of the

petitioner-association to reconstruct the compound wall marked as 'BC' in the rough sketch, Ex.A19.

In the affidavit filed in support of the said application, it is alleged that the respondents had damaged the compound wall existing on the South-Eastern side of the suit schedule property and so, the petitioner is instructed to construct the compound wall to protect the properties of the petitioner-association, and since the petitioner-association is facing trouble from the respondents, police-aid is to be given to enable them to reconstruct the compound wall as sought.

Counter affidavit is filed by the first respondent opposing the said application stating that the executing Court cannot go beyond the scope of the decree and the relief sought in E.A.No.15 of 2016 is outside the scope of the E.P. and the suit. It is also pointed out that though the petitioner sought a relief of mandatory injunction directing respondents 1 to 5 to reconstruct the demolished compound wall, the said relief was refused in the decree dated 13.12.1999 in A.S.No.1304 of 1995. Other pleas were also raised.

By order dated 05.03.2018, the Court below dismissed the said application holding that the relief prayed by the petitioner to permit it to construct a compound wall by providing police-aid appears to be outside the scope of the decree granted in A.S.No.1304 of 1995. It also opined that the relief sought for is not maintainable and improper.

Challenging the same, this Revision is filed.

Counsel for the petitioner sought to contend the right of the petitioner to the compound wall has been declared in the decree and if the compound wall fell down, petitioners would have a right to maintain it and the said right, therefore, flows from the decree. He further contended that the view of the Court below that the relief in the E.A. would not fall within the scope of the decree in the suit is not correct.

Counsel for the first respondent refuted the above contentions and supported the order passed by the Court below.

I have noted the contentions of both sides.

It is settled law that executing Court cannot go beyond the decree and can only execute the decree as it stands.

As already mentioned above, the decree granted in favour of the petitioner is a decree of permanent injunction restraining respondents 1, 2, 4 and 5 from interfering with the peaceful possession of the suit schedule property including its compound wall marked as 'ABC' in Ex.A19-rough sketch and also from interfering with the maintenance, development and upkeep of the 18 feet approach road marked as 'ADEF GH' in Ex.A19-rough sketch. The trial Court specifically refused to grant relief to the petitioner of mandatory injunction directing the respondents 1 to 5 to close the 'ABC' compound wall and refused the relief of

perpetual injunction retraining them from releasing the water from the overhead tank.

In the E.P., no doubt it is alleged by the petitioner that there is a violation of the above decree by the use of the portion of the suit schedule property by the son of the first respondent and there is also allegation that he damaged the compound wall. The said allegation has to be gone into by the executing Court when the E.P. is taken up after giving liberty to both sides to lead evidence therein.

The question arises whether pending disposal of the E.P., the petitioner can be granted relief in E.A.No.15 of 2016 of police-aid to enable the petitioner to reconstruct the compound wall marked as 'BC' in the rough sketch, Ex.A19.

In my considered opinion, the perpetual injunction granted in favour of the petitioner restrains respondents 1, 2, 4 and 5 from interfering with the physical possession of the suit schedule property including the compound wall marked as 'ABC' in Ex.A19-rough sketch. Thus, it restrains the respondents from interfering with the compound wall as existing on the date of the decree.

If that decree is violated by the judgment-debtor, that is a matter to be gone into in E.P.No.1 of 2016 which is still pending. There is no finding as on date that it is the first respondent or his family members who have violated the decree.

It is the contention of the petitioner that the portion of the compound wall marked as 'ABC' has fallen down and when wanted to reconstruct it for which they require police-aid in view of the opposition by the first respondent. The decree as it stands does not deal with the right of the petitioner-association for reconstruction of the compound wall.

Since the executing Court cannot go beyond the decree and grant a relief which is not contained in the decree. I do not find any error of jurisdiction in the order passed by the Court below refusing to grant relief in E.A.No.15 of 2016.

This does not, however, preclude the petitioners from taking appropriate remedies to construct their compound wall by taking separate proceedings.

The Revision, therefore, fails and is, accordingly, dismissed. The trial Court shall proceed to dispose of the E.P.No.1 of 2016 uninfluenced by this order and the order in E.A.No.15 of 2016. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

7th June 2019
RRB