

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 939 OF 2014

Between:

Mylaram Ramulu, S/o. Gurvaiah, R/o. Choutuppal Village and Mandal, Nalgonda District.
...PETITIONER/RESPONDENTS/DEFENDANT

AND

Bommidi Narsi Reddy, S/o. Achi Reddy, R/o. Choutuppal Village and Mandal, Nalgonda District.
...RESPONDENTS/PETITIONER/PLAINTIFF

CRPMP. NO: 1297 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order and decree dated 11-2-2014 passed in EpNo. 16 of 2009 in OS NO. 122 of 2007 by the Court of the Junior Civil Judge, at Ramannapet, Nalgonda District, pending disposal of Civil Revision petition.

CRPMP. NO: 2264 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order granted by this court on 28-03-2014 made in CRP No.393 of 2014.

Counsel for the Petitioner: SRI. J VENKATESWARA REDDY

Counsel for the Respondent: SRI KURITI BHASKARA RAO

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO.939 OF 2014

ORDER:

This Civil Revision Petition (for short 'CRP') is filed by the petitioner / respondent / defendant assailing the order dated 11.02.2014 passed in E.P.No.16 of 2009 in O.S.No.122 of 2007 on the file of the learned Junior Civil Judge at Ramannapet.

2. Plaintiff / decree holder has filed E.P.No.16 of 2009 in O.S.No.122 of 2007 under Order 21, Rule 32(1) of Civil Procedure Code (for short 'CPC') for sending the respondent / judgment debtor to the civil prison for implementation of the judgment and decree dated 27.11.2007 in O.S.No.122 of 2007. The trial Court, after detailed enquiry and on considering the evidence of PWs.1 and 2 on behalf of decree holder and RWs.1 to 3 on behalf of judgment debtors, allowed the execution petition and issued warrant of arrest against the judgment debtor for sending him to civil prison to implement the orders passed in O.S.No.122 of 2007, dated 27.11.2007.

3. Feeling aggrieved by the said orders, the judgment debtor has filed this CRP alleging that the order of the trial Court is contrary to law, evidence and facts. The original suit is filed for perpetual injunction, which was settled in compromise. The revision petitioner has never claimed any portion of suit schedule property. The Court below has failed to see that the decree holder has failed to mention the alleged date of interference by the judgment debtor into the suit schedule property and the trial Court has also failed to appreciate the evidence adduced on behalf of the judgment debtor. Accordingly, prayed to set aside the order impugned.

4. Heard learned counsel on both sides. The submissions made on either side have received due consideration of this Court.

5. Learned counsel for the revision petitioner would submit that the decree holder has not specifically stated on what date the judgment debtor has interfered

with his possession over the suit schedule property. Though the witnesses were examined, none of PWs.1 and 2 have stated anything about the interference. The trial Court has recorded findings only basing on the evidence of RW3, who is an independent witnesses and in fact the evidence of RW3 is crystal clear that he has not stated about any such violation of judgment and decree in O.S.No.122 of 2007 by the judgment debtor i.e. the revision petitioner herein and prayed to set aside the order impugned.

6. Per contra learned counsel for the respondent / decree holder would submit that the conduct of the judgment debtor itself is sufficient to send him to civil prison, he is continuously violating the judgment and decree in O.S.No.122 of 2007, in all three FIRs were issued against him and that he has been deliberately violating the Court orders. The trial Court has recorded findings on a careful appreciation of entire evidence on record. The order impugned does not suffer from any irregularity or

illegality and hence prayed for dismissal of the revision petition.

7. For the sake of convenience, the parties to this revision hereinafter are referred to as plaintiff and defendant as arrayed in the O.S.No.122 of 2007.

8. The plaintiff has filed the original suit in O.S.No.122 of 2007 against the defendant for perpetual injunction and that suit was settled in compromise as per the decree dated 27.11.2007. It is also averred in the petition and the counter that the matter is settled before the Lok Adalat. As per the terms of compromise, filed by the parties, the defendant is admitting the sale made by his brother vide document bearing No.109 of 2003, including the boundaries shown in the schedule, to an extent of Ac.1.00. The other land of Ac.0.10 guntas was sold by Ubbu Ramulu and the defendant has no objection for passing decree. Accordingly, in terms of compromise the suit of the plaintiff was decreed on 27.11.2007. Thus, out of Ac.1.10 guntas, the plaintiff has purchased Ac.1.00

guntas of land through registered sale deed bearing document No.109 of 2003 from the brother of defendant and Ac.0.10 guntas of land from one Ubbu Ramulu as per sale deed document bearing No.2046 of 1999 dated 10.06.1999.

9. It is the case of the plaintiff that subsequent to passing of decree in O.S.No.122 of 2007, the defendant started interfering and continued his illegal attempts to disturb the possession of the plaintiff over the suit schedule property and prayed to send him to civil prison and to order police protection for the implementation of judgment and decree in O.S.No.122 of 2007. During enquiry, on behalf of plaintiff / decree holder PWs.1 and 2 are examined. Whereas, on behalf of the respondent RWs.1 to 3 are examined. Be it stated that in his supporting affidavit filed in E.P.No.16 of 2009 nowhere the decree holder has mentioned the specific date and time of interference except mentioning in paragraph No.4 that the Court may be pleased to grant police aid to implement the

orders and also to send the judgment debtor to civil imprisonment under Order 21, Rule 32 of CPC for violation of the orders of Court.

10. It is the specific case of the defendant in his counter that the decree holder did not mention on what date and time and in which manner the judgment debtor has caused interference, vague allegations are made. In fact the judgment debtor has never violated the terms of compromise, false allegations are levelled against him. Though his brother has sold undivided share to the plaintiff, after filing of the suit, disputes were settled and as per the settlement, he is in possession and enjoyment of land and the plaintiff is in possession of the land purchased from his brother.

11. The above being the pleadings in the Execution Petition and the counter, now let us examine the oral evidence adduced on behalf of both the parties. The decree holder himself got examined as PW1, he has also examined one Yenna Shankar Reddy as PW2. Curiously in the

evidence of both the witnesses, did not mention any date, time and manner of interference by the defendant. Vague allegations are made stating that the defendant has interfered with the possession of the plaintiff over the suit schedule property. Whereas, on behalf of the respondent, RWs.1 to 3 are examined. The defendant/judgment debtor himself is examined as RW1, whereas, RWs.2 and 3 are the independent witnesses. As per the findings recorded by the trial Court it has placed reliance mainly on the evidence of RW3 stating that he has specifically deposed that the defendant has interfered with the possession of the plaintiff over the suit schedule property.

12. RW3 has filed his evidence affidavit in lieu of chief-examination in support of defendant. In the cross-examination this witness has stated that about five years back there was some interference and denied all other suggestions given to him. Except making a bald statement that it was about five years prior to that day, RW3 has not stated anything against the judgment debtor. But the trial

Court has placed heavy reliance on such evidence and observed that even according to RW3 there was interference by the respondent about five years prior to giving his evidence. Accordingly, the execution petition was allowed and arrest warrant was issued against the respondent / judgment debtor on payment of process.

13. This application is filed under Order 21, Rule 32 (1) of CPC for disobedience of the judgment and decree dated 27.11.2007 in O.S.No.122 of 2007. In case of disobedience of decree, the Court can order both detention in civil prison and attachment of property but the detention in civil prison should not be ordered unless violation appears to be gross in nature. Thus, in other words, if there is gross violation of decree for perpetual injunction, detention of judgment debtor in civil prison is proper.

14. The law is further well settled that if the evidence is not showing that judgment debtor is fully aware of the terms of the decree and that consciously and deliberately disobeyed the decree of injunction, in such

circumstances, the detention in civil prison is not proper. In the present case, the plaintiff / decree holder is not able to establish that on a specific date and time, the defendant interfered with the possession of the plaintiff subsequent to decree and the manner of interference etc. In the absence of specific pleadings and evidence as to the manner of interference by the judgment debtor / the defendant, he could not be sent to civil prison and that the execution petition is liable to be dismissed.

15. In the present case, the oral evidence of PWs.1 and 2 is silent as to the date, time and manner of interference by the defendant in respect of suit schedule property. Though the trial Court has placed heavy reliance on the evidence of RW3, I do not find anything in the evidence of RW3 except the witness stating that about five years back the interference was caused. Such bald assertion and evidence without any specific date, time and manner of interference, is not sufficient to send the judgment debtor to civil imprisonment for enforcement of

decree and judgment in O.S.No.122 of 2007. However, the decree holder is at liberty to initiate appropriate proceedings in case of interference by the judgment debtor in future.

16. In the result, this Civil Revision Petition is allowed, order impugned dated 11.02.2014 in E.P.No.16 of 2009 in O.S.No.122 of 2007, on the file of the learned Junior Civil Judge, Ramannapet is hereby set aside. Consequently E.P.No.16 of 2009 stands dismissed. In the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stand closed.

//TRUE COPY//

Sd/- T. SRINIVAS
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The Junior Civil Judge, Ramannapet , Nalgonda Dist.
2. One CC to SRI. J VENKATESWARA REDDY Advocate [OPUC]
3. One CC to SRI. KURITI BHASKARA RAO Advocate [OPUC]
4. Two CD Copies

[Handwritten signature]

HIGH COURT

AVRJ

DATED: 21/10/2022

ORDER

CRP.No.939 of 2014



ALLOWING THE CRP WITHOUT COSTS

⑥
29/11/22
Hvt