



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
CIVIL REVISION PETITION NO: 1224 OF 2019

Between:

1. KATURI VEERRAJU S/o. Late Krishna Murthy, Hindu, Agriculture, Aged 52 years,are R/o. Goligudem, Tadepalligudem, West Godavari Dist.
2. Katuri Suryachandrarao S/o. Late Krishna Murthy, Aged 50 years, Hindu, A-Triculture
3. Katuri Subarao S/o. Late Krishna Murthy, Aged 48 years, Hindu, Agriculture
4. Katuri Satyavati W/o. Veerraju, Aged 50 years, Agriculture
5. Katuri Mani W/o. Suryachandararao, Aged 48 years, Hindu, Housewife
Petitioners / JDRs are R/o. Goligudem, Tadepalligudem, West Godavari Dist.

...PETITIONER(S)

AND:

1. TANINKI SATYANARAYANA S/o. Late Suryanarayana, Aged 58 years, Hindu, Agriculture,
R/o. Gollagudem, Tadep-Iligudem, West Godavari Dist.

...RESPONDENTS

Counsel for the Petitioner(s): T JANARDHAN RAO

Counsel for the Respondents: NIMMAGADDA REVATHI

The Court made the following: ORDER

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****CIVIL REVISION PETITION Nos.1224 and 2839 of 2019****COMMON ORDER:**

Both the C.R.Ps. are filed by JDRs 9 to 13; while C.R.P.No.1224 of 2019 is filed against the order in E.A.No.58 of 2019 in E.P.No.22 of 2018 dismissing the application to stay the executing proceedings, the other C.R.P.No.2839 of 2019 is filed against the order dated 21.02.2019 allowing the E.P.No.22 of 2018 and issuing warrant against JDRs 9 to 13 to commit them to civil prison for violation of injunction decree in O.S.No.1 of 2000.

2. Shorn of unnecessary details, the two C.R.Ps. can be said to be filed in the following background:

a) O.S.No.1 of 2000 was filed by respondent/DHR/plaintiff on the file of the Principal Junior Civil Judge, Tadepalligudem, initially against defendants 1 and 2, who are his father and elder sister, seeking perpetual injunction decree in respect of plaint schedule tiled house and its appurtenant site. Pending suit, as the 1st defendant died, his L.Rs. were brought on record as defendants 3 to 8. Defendants 2 to 8 filed written statement and contested the suit. The trial Court in para 13 of its judgment, while categorically holding that the plaintiff was in continuous lawful possession of the schedule property, granted the decree in his favour. It observed that the rights of the defendants, if any, in respect of the plaint schedule property are concerned, they have to be worked out in a separate suit.



b) Aggrieved, the defendants filed A.S.No.43 of 2005 on the file of the Senior Civil Judge, Tadepalligudem. Since the 2nd defendant in the suit died, her L.Rs. were brought on record. The appellate Court dismissed the appeal on 15.02.2017 by confirming the judgment of the lower Court.

c) Thereafter, the plaintiff filed E.P.No.22 of 2018 against JDRs 9 to 13 under Order XXI Rule 32 CPC to commit them to civil prison for violation of injunction decree. His plea was that JDRs 9 to 13 were causing obstruction and unnecessarily picking up quarrels with him and throwing sand which was heaped by him for levelling the site and to install fencing to safeguard his property. They were also threatening to file false criminal cases against him. He thus sought to execute the injunction decree against them. It appears, JDR No.9 filed counter contending that the DHR was trying to interfering with JDRs' possession over the E.P. schedule property with the help of rowdy elements and the employees of Padma Sai Finance. The DHR and his men threw away the water storage container (kundi). The JDRs have been in possession and enjoyment of the E.P. schedule property since their childhood and the DHR by showing false tax receipts obtained decree. The JDRs further contended that pursuant to the observations in the judgment in O.S.No.1 of 2000, the JDRs filed a declaration suit in respect of their shares and the said suit O.S.No.____of 2018 and I.A.No.1232 of 2018 are pending adjudication. Since the JDRs, who are the legal heirs of the 2nd



defendant are in lawful possession and enjoyment of the E.P. schedule property, the question of their violating the decree does not arise.

d) The execution Court negated the contention of the JDRs and allowed the E.P. with the following observation:

“Moreover, once a permanent injunction decree is passed and the same is confirmed by the 1st appellate Court, the JDRs are supposed to obey the orders of this Court. The pleadings of the JDR itself show that they are in possession of the E.P. Schedule property which amounts to violation of permanent injunction decree passed in the above suit. Therefore, this Court safely concluded without going into other merits of the case that the JDRs 9 to 13 are interfering with the possession and enjoyment of the DHR over the E.P. schedule property. There are merits in this petition, the DHR is entitled to get his relief sought in this petition. Accordingly, this petition is allowed.”

Thus, the execution Court held that the plea of the JDRs that they are in possession of the E.P. schedule property itself amounts to violation of the permanent injunction decree and so far, they have not taken any steps to file declaration suit to work out their shares in respect of the E.P. schedule property. On these observations, it allowed the E.P. and consequently dismissed the stay application.

Hence the two C.R.Ps.

3. Heard learned counsel for the revision petitioners/JDRs Sri T. Janardha Rao and Smt. Nimmagadda Revati, learned counsel for the respondent/DHR.

4. The main plank of argument of learned counsel for the revision petitioners is that in execution of injunction decree under Order XXI Rule 32 CPC, the execution Court shall not order detention of JDRs in



civil prison on the mere averment of the DHR that the JDRs have violated the injunction decree. On the other hand, having regard to the fact that the personal liberty of the JDRs is at stake, the strict compliance of Order XXI Rule 32 CPC is the *sine qua non* for allowing the E.P. Viewing in that angle, learned counsel argued, it is the bounden duty of the DHR to establish that the JDRs, despite having an opportunity of obeying the injunction decree, still wilfully failed to obey the same and thereby they have violated the terms of the decree and liable for committing to civil prison. On the aspect that mere disobedience is not sufficient and wilful disobedience should be established to allow the E.P., he relied upon the following decisions:

- 1) *U.C.Surendranath Vs. Mambally's Bakery*¹,
- 2) *Ram nath Vs. Smt. Tapesara and others*²,
- 3) *Mujeeb Ahmed Khan Vs. Sadar Anjuman-E-Islamia, Hyderabad*³,
- 4) *Kariyappa Vs. Haladappa*⁴, and
- 5) *Koya Ranga Reddy and others Vs. Koya Narayana Reddy and others*⁵

Learned counsel further strenuously argued that in the instant case the JDRs have been in lawful possession and enjoyment of the E.P. schedule property since prior to the filing of the suit and therefore the question of their committing disobedience of the decree neither arises nor was established by the DHR. Further, as observed by the trial Court in its judgment, the JDRs have filed a separate suit for

¹ 2019 (5) ALT 179 (SC)

² AIR 1985 Allahabad 26

³ 2002 Suppl. (1) ALD 770

⁴ AIR 1989 Karnataka 163

⁵ 2007 (3) ALT 689



declaration and stay application and both are pending. In this backdrop, the execution Court was wholly misconceived in holding that the JDRs committed violation of the decree and in allowing the E.P.

5. In oppugnation, Smt. Nimmagadda Revati, learned counsel for the respondent/DHR argued that in spite of the categorical finding given by the trial Court as well as the appellate Court that the DHR was in lawful possession of the E.P. schedule property, the blatant claim of the JDRs that they have been in possession of the E.P. schedule property itself would amount to gross violation of the injunction decree. She argued that the conduct of the JDRs itself manifests the wilful disobedience of the injunction decree and therefore, no further specific proof need to be shown by the DHR to execute the decree.

6. The point for consideration is:

Whether, while executing an injunction decree under Order XXI Rule 32 CPC, the DHR is obligated to establish that the JDR(s) has wilfully failed to obey the decree in spite of having an opportunity to obey and if so, in the instant case, the JDRs are guilty of such wilful disobedience?.

7. **POINT:** To consider the rival arguments, it is apposite to extract Order XXI Rule 32 CPC which reads thus:

“ Decree for specific performance for restitution of conjugal rights, or for an injunction – (1) Where the party against whom a decree for the specific



performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months if the judgment – debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.”

As can be seen from first proviso, the phraseology “has had an opportunity of obeying the decree and has wilfully failed to obey it”, pellucidly manifests that mere disobedience of an injunction decree by



the JDR is not sufficient to hold him guilty but the burden rests on the DHR to establish that the JDR had an opportunity of obeying the decree and that he wilfully failed to do so. This principle has been enshrined in a number of decisions.

8. In **Surendranath's case** (1 supra), Hon'ble Apex Court in the context of Order XXXIX Rule 2(A) CPC has observed that there has to be not a mere disobedience but it should be a wilful disobedience. The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the Court. The aforesaid observation, in my view, equally applies to the cases under Order XXI Rule 32 CPC.

9. In **Koya Ranga Reddy's case** (5 supra), it was observed by a learned single Judge of the common High Court of A.P. that when it comes to the question of directing the detention of the JDRs under Order XXI Rule 32 CPC, since the personal liberty is involved, the strict compliance of the relevant provisions becomes mandatory. It was further observed that mere existence of a decree for perpetual injunction or for that matter, a mere complaint by the DHR against the JDR is not suffice to direct the detention of JDR. Two facts are necessary to be proved by the DHR. The first is that the JDR must have an opportunity to obey the decree and second is that despite such an opportunity, he had wilfully failed to obey it.

The other decisions cited by the revision petitioners also exposit the same principle. Thus, there is no demur that in the instant case,



the DHR has to establish that the JDRs have had an opportunity of obeying the decree and still they wilfully failed to obey the same.

10. Coming to the facts, it is the case of the DHR that JDRs 9 to 13 caused obstruction and entered into unnecessary altercation with him and they threw away the sand which was kept by him to level the site and to install a fencing to safeguard his property. Further, JDRs 12 and 13 were threatening him to file false criminal cases. It must be noted that it is not the case of JDRs that after passing of decree, they have had no connection with the E.P. schedule property and they have not caused any acts of vandalism as alleged. On the other hand, the averments in their counter are that even though an injunction decree was passed against the JDRs, practically they are in possession of the schedule property even prior to the execution of settlement deed in favour of their mother and while passing the injunction decree, the trial Court was pleased to direct their mother to work out her remedy by way of a declaratory suit and in fact, such a suit was filed long back and notices were sent to the DHR and receiving the same, the DHR hastily filed the E.P. They reiterated that they are in peaceful possession of the schedule property since long back.

11. So, from the above counter averments, the JDRs tried to manifest that despite the perpetual injunction decree, they have, in fact, been in possession of the schedule property. Basing on such contention, the argument of learned counsel for petitioners is that the question of disobedience, much less wilful disobedience does not arise. In my view, this argument though apparently looks sound,



however, does not have legal scaffolding. The reasons are not far to seek. It should be noted that both before the trial Court and the first appellate Court, the contention of the present JDRs was similar that they have been in peaceful possession and enjoyment and the plaintiff is not. With reference to the oral and documentary evidence, both the Courts below negated the said contention and peremptorily held that it was the plaintiff who was in lawful possession of the plaint schedule property and decisively granted perpetual injunction decree. Of course, the trial Court made an observation that the rights of the defendants are concerned, they have to work out in a separate suit. That observation by no means is an indicative that till the defendants file a separate suit and vindicate their rights in respect of the subject property, the decree in O.S.No.1 of 2000 would be kept in cold storage. The purport of the said observation logically means the defendants, if advised, can institute a suit of a suitable nature to vindicate their alleged rights in the suit property and if they win in the said comprehensive suit, they can get the suit property. Till such time, the prohibitory injunction decree passed in O.S.No.1 of 2000 shall operate against the defendants and their men. This is the trite law. Since in practice, it will take some time for such a suit to be decided, the defendants may seek a suitable interlocutory order to preserve their alleged possession before the Court where they instituted the suit and the said Court, if convinced, may pass such an interim order. Such laying of a suit and interlocutory application are all different aspects and mere filing of such proceedings is not an automatic guarantee of suspension of the decree and judgment in



O.S.No.1 of 2000. The JDRs/defendants, on the strength of the said suit, cannot argue that they are in lawful possession of the suit schedule property and they have not committed any disobedience of the decree. Their contention itself amounts to wilful disobedience because their alleged possession is not recognised by law, in view of the decree and judgment in O.S.No.1 of 2000 being operational.

12. In *V.S. Alwar Ayyangar Vs. Gurusamy Thevar*⁶, the facts are more or less similar. A perpetual injunction decree was passed against the defendant. The plaintiff sought to execute the decree complaining that despite the decree, the JDR was interfering with his possession and thus wilfully disobeyed the Court's injunction and prayed to commit the JDR to civil prison. The JDR in turn objected the execution on the score that he was entitled to the possession of the land. His case was that under Section 16A of the Tamilnadu Agricultural Land Record of Tenancy Rights Act, 1969, the Record Officer recorded the judgment debtor as a cultivating tenant of the suit land which is sufficient to resist the execution of the decree. On the other hand, the contention of the DHR was that after the perpetual injunction decree was confirmed by the appellate Court, only subsequently the JDR approached the Record Officer and obtained a declaration that he was a cultivating tenant. Hence, the execution Court cannot go behind the decree. It was observed that as against the entries made by the Record Officer holding the JDR as cultivating tenant, divergent proceedings including the writ proceedings were

⁶ MANU/TN/0301/1981=AIR 1981 Mad 354



taken up by both parties and ultimately decree holder's appeal against the latest order was pending in the appeal. Since that issue is still pending, the High Court of Madras made the following observations:

“ Paragraph 19 – It may be that in the fullness of time, with a final and conclusive order wholly in favour in the record of rights proceedings, the judgment debtor might not be left stranded without a suitable remedy to enable him to resume possession and proceed to exercise his rights as a cultivating tenant. But until that happens, and until he is helped by a competent decree or order to obtain possession, he is bound by the decree for injunction which is even now in force and which restrains him from for ever interfering possession. The wriggle out of an injunction of this kind and flourish in the court's face an entry in his favour in the record of tenancy rights. An insertion of that kind, by itself, cannot provide the judgment debtor with any excuse to take the law into his own hands, and enter possession of the decree holder's fields, violating the terms of the injunction. A court of law cannot sit still with folded hands and countenance its injunction being treated with indifference or scant courtesy by the party against whom it was directed and who is bound to obey its terms. This is particularly so, when, as it happened in this case, the decree for injunction had been confirmed in successive appeals, right up to this Court. Even the plea of nullity, based on Sec.16-A is now found on examination to be with the decree holder's judgment debtor cannot without substance. There can, therefore, be no defence whatever open to the judgment debtor against executing the decree for injunction in accordance with Or.21 R.32.”

Further, with regard to the contention of the JDR that the DHR has not placed any evidence that the JDR committed wilful disobedience of the decree, the High Court observed that the JDR, by filing several affidavits, saved DHR from producing such evidence because from those affidavits, it was clear that the JDR asserted his possession and in the teeth of such brazen assertions, he cannot claim that there was no proof of wilful disobedience.



13. Thus, from the above, two jurisprudential points would emerge. The JDR's claim of possession in spite of the injunction decree is itself a proof positive of wilful disobedience of the decree. Next, till the JDR ultimately succeeds in his own proceedings, which is subjudice, he has to oblige the injunction decree. If he ultimately succeeds, he can seek for restitution.

14. Thus on a conspectus of facts and law, what surfaces is that the execution Court was right in upholding the E.P. and dismissing the stay application filed by the JDRs. In the normal circumstances, the revision petitions are liable to be dismissed. However, considering the fact that some of the JDRs are women and their detention in civil prison cause much embarrassment to them and their family members, this Court considers fit to give an opportunity to them to oblige the decree.

15. Accordingly, these Civil Revision Petitions are disposed of with a direction that the revision petitioners/JDRs 9 to 13 shall, within two weeks from the date of this order, submit their sworn affidavits giving an undertaking before the execution Court to the effect that until they obtain an interim or final order upholding their lawful possession in respect of the E.P. schedule property, they will not interfere with the said property in any manner in future. On filing such affidavits and being satisfied, the execution Court may close the proceedings in E.P.No.22 of 2018 without committing the JDRs to civil prison. However, on their failure to file the sworn affidavits as aforesaid, the



execution Court can continue the further proceedings in E.P.No.22 of 2018. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

3rd March, 2021

Note: LR copy be marked.

(b/o)

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**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI****CIVIL REVISION PETITION Nos.1224 and 2839 of 2019**

Between:

Katuri Veerraju and others

.. Petitioners

and

Taniki Satyanarayana and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 03.03.2021

SUBMITTED FOR APPROVAL:**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

U. DURGA PRASAD RAO, J



*THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
+Civil Revision Petition Nos.1224 and 2839 of 2019

%03-03-2021

+C.R.P.No.1224 of 2019

Katuri Veerraju and others .. Petitioners

Vs.

\$ Taniki Satyanarayana and others .. Respondents

+C.R.P.No.2839 of 2019

Katuri Veerraju and others .. Petitioners

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<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri T. Janardhan Rao

^ Counsel for respondents : Smt. Nimmagadda Revathi

? CASES REFERRED :

1. 2019 (5) ALT 179 (SC)
2. AIR 1985 Allahabad 26
3. 2002 Suppl. (1) ALD 770
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