

E.A.No.30/2022 in E.P.No.01/2021
OS.No.1194/2002

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Dt:30.09.2022

**IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE-CUM-JUDICIAL
MAGISTRATE OF I CLASS :: ELURU**

PRESENT:- Sri P. DIVAKAR, Principal Junior Civil Judge-cum-
Judicial Magistrate of I Class, Eluru.

This is Friday, the 30th day of September, 2022

E.A.No.30/2022 in E.P.No.01/2021 in OS.No.1194/2002

Between:

Chilakalapudi Sambasiva Rao, S/o. Veerabhadra Rao, Hindu, Male,
Aged 58 years, R/o. Jaganadhapuram village, Pedavegi Mandal,
W.G.Dt., ... Petitioner/D.Hr

And:

1. Bollina Gayatri Devi, W/o. Pramodh Jeevana Murali, Hindu,
Female, Aged 42 years, R/o. Srinagar colony, 28, Navodaya
colony, Hyderabad city, Telangana State.
2. Kamma Pakeerayya, S/o. Nagabhushanam, Hindu, Male,
Aged 63 years, R/o. Jaganadhapuram, Pedavegi Mandal.
3. Paladugu Bhanu S/o. Bapeswar Rao, Hindu,
male, aged 45 years, R/o. Jagannadhapuram of Pedavegi Mandal.
4. Vegunta Ravi Kumar S/o. Gangadharam, Hindu, Male,
Aged 36 years, R/o. Jagannadhapuram, Pedavegi Mandal.
...Respondents/J.Drs

(This petition against R3 and R4 only).

This Petition is coming on this day for final hearing before me in the presence of Sri M. Suryanarayana, Advocate for the Petitioner/D.Hr and of Sri N.Narasimha Rao, Advocate for the respondents/J.Drs 3 and 4 and having stood over till this day for consideration, this Court delivered the following:

-O R D E R-

01. This is the petition filed by the petitioner/D.Hr under Order 39 Rule 2A and Sec.151 of Civil procedure code (in short C.P.C) seeking Police aid to implement permanent injunction orders passed by this Court in O.S.No.1194/2002, dated 21.10.2008 and for such other and further reliefs which the Court may deem fit and proper under the circumstances of the case.

02. The brief averments of the affidavit filed in support of the Execution petition are that :

The D.Hr herein is the successful plaintiff in O.S.No.1194/2002.The suit originally filed for permanent injunction, which is decreed in favour of the petitioner.

Aggrieved by the decree and judgment, the respondents herein filed an appeal in A.S.No.236/2008 on the file of Hon'ble VII Additional District Judge's Court, Eluru, which was dismissed for default. There is no stay granted by the appellate Court as well. However, the respondents chose to file the restoration petition to restore the A.S.No.236/2008, which is pending disposal. While the matter stood thus, the J.Drs 1 and 2, without having any manner of right, title and possession by encroaching the rowdy elements, tried to oust the petitioner/D.Hr from the petition schedule property and even went to an extent of removing the starter and motor of the bore well located in the petition schedule property. Though the petitioner/D.Hr moved a complaint to the concerned Police, with the political support of the J.Drs, the Police did not take action against the J.Drs. Then the petitioner filed E.P.No. 1 of 21 seeking arrest of J.Dr1 and 2 for violating the injunction orders and E.A No. 1 of 21 seeking police aid. The E.P as well as E.A were allowed. The 1st Jdr brought under arrest and sentenced to civil prison. After the direction of Hon'ble High court he was released. In-spite of these efforts, the J.Drs 1 and 2 inducted the J.Dr 3 and 4 to cause disturbance to the Petitioner who their men and followers and they are breaching the injunction order in favour of the Petitioner. Then the petitioner filed O.S.161/22 against Respondents 3 and 4 on the file of this court and obtained ad-interim injunction orders. Still, they are continuing their interference. The petitioner/D.Hr not in a position to resist the high handed activities of the respondents/J.Drs and their followers. Therefore, filed the present petition filed seeking police aid.

03. On the other hand, 4th respondent(in short R4) filed counter, adopted by 3rd Respondent (in short R3) contending that there are not the defendants to O.S.1194/2002. No E.P filed against them. Even the E.P.No. 1/21 filed against the R1 and R2 herein also disposed. The R2 was sent to civil prision but he filed C.R.P 60/20 on the file of Hon'ble high court of AP and the Hon'ble high court granted stay of arrest of R2 and stay being

extended from time to time. R1 also filed CRP 231/22 on the file of Hon'ble High court and similar stay order granted by Hon'ble High court. Since there is decree passed against R3 and R4 the present application is not maintainable. Through Registered sale deed dt:10.01.2002, the R1 is the absolute owner of Ac.3.50 cents to the west of Ac.7.00 in R.S.No. 216 of and Ac.1.00 cents in R.S.No.217/4, Ac.0.58 cs in R.S.No.21/3A and Ac.1.61 cs in R.S.No.218/1B and Ac.0.20 cs in R.S.218/2 and Ac.0.55 ½ cs in R.S 218/2 of Jagannndhapuram village. In the PLC the R4 contended that he is the tenant to R1. By suppressing the Writ petitions and PLC the petitioner filed, filed O.S.162/22 , so also this petition. Therefore, prayed to dismiss the Petition.

04. Heard both the sides.

05. Now, the **Points** for consideration is that-

"1. Whether the R3 and R4 can be considered as J.Drs 3 and 4 in execution application, though they were technically not shown as defendants in the suit and J.Drs in the Main E.P"

"2. If point no.1 answered in favour of Petitioner, whether the Execution application is maintainable against he J.dr3 and 4 without there being any E.P pending against them , much less when the main EP against J.Dr 1 and 2 disposed ?"

"3 whether the petitioner is entitled to seek police protection for implementation of ad-interim injunction orders?"

Brief back ground of the case : The petitioner/D.Hr herein is the Plaintiff and the first R1/1st J.Dr is the second defendant and second R2/2nd J.Dr is the third defendant in O.S.No.1194/2002. The first defendant/Subash Chandra Bose died. It is admitted fact that, the decree on contest passed against the present R1 and R2/J.Drs 1 and 2, restraining them and deceased Subash Chandra Bose from interfering with the petition schedule property by way of permanent injunction. The suit is of the year 2002 and decree in the year 2008. Thirteen years after passing decree, the petitioner/D.Hr herein knocked the doors of the Execution Court, contending that the R1 and R2/J.Drs 1 and 2 were interfering with his possession and tried to oust him from

the petition schedule property , then they approached the police seeking protection but there is inaction from the police. Hence the petitioner filed E.P.1/21 against R1 and R2 under Order 21 Rule 32 and E.A.1/21 seeking police aid which were allowed. Since the arrest of J.Dr 1 and 2 ordered and police protection ordered, their men i.e., J.dr 3 and 4 are now trying committed breach of injunction orders and interfering with the possession of petitioner. Though the same was intimated to police, there is inaction from the Police, hence the D.Hr filed the present petition.

06. **Point No. 1 :**

"1. Whether the 3rd and 4th respondent can be considered as J.Drs 3 and 4 in execution application, though they were technically not shown as defendants in the suit and J.Drs in the Main E.P"?

In this context, the operative portion of the decree will aid the executing court to arrive proper conclusion. The operative portion run thus- ' that the defendants be and are hereby restrained from ever interfering with the peaceful possession and enjoyment of plaint schedule property by Plaintiff by way of permanent injunction'.

Thus decree is very clear that the injunction granted against the defendants which literally mean and include their men and representatives. The J.Dr3 and J.Dr4 are contending that, they are the tenants . Then they can certainly be termed as representatives and men of J.Dr1 and J.Dr2. When the original defendants were sentenced to civil imprisonment they simply kept quiet and their men interfered. In such a case the can R3 and R4 can be permitted to say that, since the decree is not against them, they can violate the decree ?. Certainly not. The Decree is binding upon the Defendants and their men also. If the contention of the J.Dr1 and 2 accepted, each and every defendant in the Permanent Injunction Decree will kept quiet and by standing behind back, push forward their men on the ground and plead that

there is no breach committed at all. I found no force in the contention of the counsel of J.Dr 3 and 4. Thus, I am of the opinion that, the Injunction order binding upon the men of the J.Dr1 and 2, therefore the Execution application is maintainable against he J.Dr 3 and 4 as well.

07. **Point No. 2:**

"2. If point no.1 answered in favour of Petitioner, whether the Execution application is maintainable against the J.dr3 and 4 without there being any E.P pending against them , much less when the main EP against J.Dr 1 and 2 disposed ?"

Of course, this is not the petition filed seeking arrest of J.Dr 3 and 4 , if that being so obviously, the D.Hr is expected to file separate E.P but for police aid it is settled law that, section 151 CPC application is maintainable. When it is concluded that the Defendants/J.Drs 1 and 2 committed breach of injunction orders, they kept quiet and their men alleged to committed breach, it is unreasonable to drive the D.Hr file Execution petition again against the men of Defendants/J.Drs, particularity for the police aid. If such burden is imposed on D.Hr the defendants' men also again whom an order passed will keep quiet after passing of order against them and other men of defendants/J.Dr will come into picture. Where is an end to it ? And when the the D.Hr will enjoy the fruits of the Decree ?. Thus, I am of the considerable opinion that, the contentions of counsel of R3 and R3 is bereft of substance. Thus, I am of the considerable opinion that, the present application is maintainable.

08. **Point No.3 :**

"(3) "whether the petitioner is entitled to seek police protection for implementation of ad-interim injunction orders?"

The suit is of the year 2002 and decreed in the year 2008. Thirteen years after passing decree, the petitioner/D.Hr herein knocked the doors of the Execution Court, contending that the R1 and R2/J.Drs are interfering with his possession and tried to oust him from the possession of the petition schedule property and when he approached the Pedavegi Police seeking police aid ,

there is inaction on part of police and filed main E.P and E.A as well against J.Dr 1 and 2 obtained police aid. Then the J.Dr 1 and 2 kept kept quirt and push forward the J.Dr3 and 3 who are troubling the petitioner in enjoying the fruits of the decree. . Therefore, the petitioner 14 years after passing decree filed the present petition. In support of the contention of the counsel for the petitioner/D.Hr, he relied upon a decision reported in **2010 (2) ALD 41 (DB)**, wherein the parties are **Polavarapu Nagamani and others Vs. Parchuri Koteshwara Rao and others**. Of course, by relying upon the same decision, the counsel for the respondents/J.Drs argued that by virtue of guidelines given in the said case, the stand of proof required is very high, in which the petitioner/D.Hr failed to establish. Therefore, request to dismiss the E.P. In view of such rival contentions, I have gone through the judgment, wherein in para No.24, the Hon'ble Division Bench of Hon'ble High Court given four guidelines -

(i) When the allegations are made by the party obtaining an order of injunction, that the said order has been violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of CPC seeking attachment and/or arrest of the violator for contempt of the Court.

(ii) When a petition is filed seeking police protection, whether or not to exercise of power under Section 94(e) or Section 151 of CPC, the facts alleged or pleaded, an order for police protection cannot be passed in a routine manner.

(iii) In an application is filed by the person obtaining an interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty, and rights of the opposite party.

(iv) The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities. Be it noted, as held by Supreme Court in (2001) 7 SCC 530 and (2002) 4 SCC 21, in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self-serving statements of the party seeking the intervention of the Court.

08(a). As can be seen from the above guidelines, it is clear that the stand of proof is required to be high and must be in between standard of beyond reasonable doubt and standard of balance on probabilities.

08(b). The dictum of the above judgment of our Hon'ble High Court is that, the order for police protection cannot be passed in a routine manner. The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience of violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities. Mere filing of affidavits or self-serving statements of the party is not sufficient seeking the intervention of the Court.

08(c). The dictum of the judgment in 2010 (6) ALT Page 92 DB is that, the petitioner can make a complaint that opposite party has violated the order of injunction either by dispossession or by alteration of nature of property or by any other positive act contrary to the order of injunction leading to result in causing legal injury to the petitioner. **In the first case**, the Court has power to direct the police to prevent such violation by providing necessary protection to exercise of power under Sec.94 (e) r/w 151 CPC provided there is a threat of disobedience. In the **second situation** as per the dictum of the Hon'ble High Court judgment referred above, where the complaint is that the respondent has violated the injunction either by demolition or otherwise interfere with the possession and enjoyment of the property, the Civil Court cannot pass police protection in exercise powers in Sec.94 C.P.C. The reasons according to the Hon'ble High Court the power of the Court to pass police protection or to prevent the disobedience injunction order is different from power of the Court to deal with actual disobedience. In such cases, the remedy of the aggrieved party is to file execution petition under Order 21 Rule 32 CPC or under Order 39 Rule 2A of CPC.

08(d). On the other hand, the petitioner relied upon a decision reported in **2014 (2) ALD 281** in a case between "**Gampala Anthaiah and others, v. Kasarla Venkat Reddy**". In that judgment, Hon'ble Justice Sri M.S. Ramachandra Rao, Judge, Hon'ble High Court of A.P., clearly held that except the guideline no.(i) of Polavarapu nagamani's case, the remaining guidelines holds good. In support of such contention, Hon'ble Justice Ramachandra rao garu taken shelter of catena of Apex court judgments and held that the first guideline become otiose. For better understanding the relevant portion in Gampala Anathaih's case is reproduced hereunder -

[19] It appears that the Division Bench in Polavarapu N agamani (1 supra) did not notice the above two decisions of the Supreme Court which have held that even in cases where there is a violation of an injunction order in a suit (as opposed to a situation where only a threat of violation exists) , orders of police protection may be granted. No doubt it is necessary that the rights of the parties should be determined either finally in the suit or, at least at an interlocutory stage in an unambiguous manner. Therefore, the view of the Division Bench in Polavarapu Nagamani (1 supra), in so far as it held that an application for police protection is not maintainable if there is a violation of an injunction order passed in a suit, has to be held to be 'per incuriam'.

Thus, with due respect to the dictum in Polavarapu Nagamani's case, I am of the opinion that the first guide already made 'per incuriam', therefore, I am of the considerable opinion that section 151 petition is maintainable for seeking police aid .

08(e). Here is the case of the petitioner that the respondents tried to oust him from the property and As per the guidelines No.(iv) of the judgment herein referred above, in all cases of contempt the plea should be proved applying the very high standard of proof and mere affidavits or self-serving statements of the party, are not sufficient to seek intervention of the Court. Here is the case, in support of the contention of the petitioner/D.Hr, in the main E.P they filed the copy of complaint

given to the Police and also No.3 adangals stands in favour of the petitioner/D.Hr. The efforts taken by the petitioner/D.Hr is clearly evident from the record i.e., Exs.P1, P2, P5 to P12 which were marked in main E.O. It is decree is passed in favour of the petitioner/D.Hr fourtneen years back years back and thereafter, in-spite of interference by the J.Dr, they could not able to get justice, even after approaching the Police, so, unless and until the Court make an endeavour to see that its decree is honoured, there is no use by having a decree in the hands of the petitioner/D.Hr. Already the Court came to a final conclusion that the petitioner/D.Hr is in possession of the property. Therefore, permanent injunction is granted in favour of the petitioner/D.Hr. Still, the respondents/J.Drs in the counter simply contended that is the deceased first defendant and his legal representatives are in possession of the property. The said admission of the respondents/J.Drs in para No.17 of the counter is sufficient to assume that they violated the decree of this Court. Once the Court adjudicated the case and came to a conclusion that the petitioner/D.Hr is in possession and enjoyment over the property and granted permanent injunction, in favour of the petitioner/D.Hr, still the respondents/J.Drs 1 and 2 in main E.P went to an extent stating before the Court that it is the deceased first defendant LRs is in possession of the property. Further, the present J.Dr3 and 4 also sailing with the same contentions raised by the J.Dr1 and 2 contending that being tenants there are in possession. Thus, they are simply contending that being the tenants they were in possession. In such a case, what more necessary to come to a conclusion that the respondents/J.Drs violated the decree and deliberately admitted the same before the Court (in counter) as well. At this juncture, profitable reference When that being the conduct and attitude of J.Dr, what more necessary to come to a conclusion that, the respondent/J.Dr violated the decree and deliberately admitted the same before the Court (in counter) as well. For this proposition of fact, I would like to recollect the recent judgment of our Hon' ble High court in a case between **Katuri Veerajju vs Taniki**

Saatyanarayana¹, His Lordship Justice Durga Parsad garu , in para 16 held -

“16. 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 petitioner is that the question of disobedience, much less willful 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 trail court and first appellate court. Te contention of the 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 negative 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.such lying of suit or interlocutory application are all different aspects and ere filing of such proceedings is not automatic guarantee of suspension of the decree and judgment in O.S. 1 of 2000. **The JDrs/defendants on the strength of the suit can't 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 willful disobedience because their alleged possession is not recognized by law, in view of the decree and judgment in O.S. 1 of 2000 being operational.**” (Bold is mine)

The dictum refereed above is pertaining to execution petition on the file of principal junior civil Judge, Jangareddy gudem, west Godavari District. The facts of the given case squarely similar to the facts of the present case. As argued in the given case, in this case also the J.Dr contended that, they are in possession of the property. In the given case his Lordship candidly held that, once the permanent injunction granted in favour of Plaintiff holding that, he is legal possession , the contention of J.Dr that they are in possession itself amount to disobedience. When the a same analogy applied to the present case, it leads to one and only conclusion that, the act of J.Dr is willful disobeyed the Permanent Injunction orders of the Court.

¹ 2021(2)ALT 517 (S.B),

9. The decree passed in favour of the petitioner/D.Hr around Fourteen years back and thereafter, in spite of efforts made by the D.Hr he could not able to get justice even after approaching the Police. So, unless and until the Court make an endeavour to see that its decree is honoured, there is no use by having a decree in the hands of the petitioner/D.Hr. Here, I would like to recollect the judgment of Hon'ble High Court of Andhra Pradesh, which speaks that the role of the Court is not end by way of passing decree and in fact, the real role will start when the Execution Petition is filed, unless and until the Court bestowed their effort to see that the decree is honoured by way of Execution, the decree will become otiose. For that proposition, I would like to rely upon a judgment reported in a case between **Konda SubbaiahVs.Yedoti Kamalakshaiah², His Lordhsip** L . Narasimha Reddy garu in para 9 held -

"9. The Executing Court erred on both counts, viz., requiring the petitioner to prove the means, possessed by the respondent, on the one hand, and relieving the respondent totally, from proving the pleas raised by him. It is on account of such an approach, that the decrees, which are obtained after prolonged litigation and considerable expenditure, are reduced to nonentities. This would naturally tell upon the efficacy of the adjudication, through Courts. Unless the Courts also feel the responsibility, to ensure that the decrees passed by it are given effect to, the credibility of the system would naturally be at stake. The facilities created by Law, in favour of judgment-debtors, can certainly be extended to them, but not just for the asking of it." (underline is mine)

Thus, by virtue of the above judgment and said legal position, the petitioner/D.Hr is able to establish that though he got decree around thirteen years back could not get the fruits of the decree. At the outset, the petitioner/D.Hr is able to establish that the respondents/J.Dr deliberately disobeyed the injunction orders of this Court and thereby they are liable for breach of injunction orders. .

10. At the outset, the petitioner/D.Hr is able to establish that the R3 and R3/J.Drs 3 and 4 deliberately

disobeyed the injunction orders by this Court and the efforts taken by the petitioner to have the fruits of the decree become otiose. Thus, this court is of considerable opinion that, unless police aid granted the Petitioner can't enjoy the fruits of the decree.

Therefore, this point is answered in favour of petitioner/D.Hr and against the respondents/J.Drs.

13. In the result, this **Execution Application is allowed.** The Pedavegi Police are directed to provide police aid to the Petitioner in order to see that the Petitioner enjoy the petition schedule property. It is made clear that, since the police aid is granted in civil case, Police are directed to take care of the personal liberty of the individuals and not to interfere with the life and liberty, rights of the opposite party and follow the guidelines of Hon'ble high court in above referred Gampala Anthaiah's case (2014 (2) ALT 661).

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in open court, this the 30th day of September, 2022.

**PRINCIPAL JUNIOR CIVIL JUDGE
CUM JUDICIAL MAGISTRATE OF I CLASS,
ELURU.**

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR PETITIONER/D.Hr:

None

FOR RESPONDENTS/J.Drs:

None

DOCUMENTS MARKED

FOR PETITIONER/D.Hr:

-Nil-

FOR RESPONDENTS/J.Drs:

- Nil -

**PJ.C.J-cum-J.M.F.C,
Eluru.**