

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION No. 2976 OF 2022

Between:

Annapurna Visha Laximi Sahitha Vishwara Swamy
Temple, rep. through Hereditary Trustee K. Raj Kumar
... Petitioner

and

The Gram Panchayat Jammikunta,
Through its Executive Officer
At present Nagara Panchayath,
Rep. by its Commissioner, Jammikunta & others
...Respondents

Date of Judgment Pronounced: 14.03.2023

Submitted for Approval:

Hon'ble Smt. Justice LALITHA KANNEGANTI

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

(LALITHA KANNEGANTI, J)

*** Hon'ble Smt. Justice LALITHA KANNEGANTI**

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! Counsel for the petitioner : Sri K.V. Bhanu Prasad

^ Counsel for the respondents :

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>HEAD NOTE:

? Cases cited:

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**CIVIL REVISION PETITION No. 2976 OF 2022****ORDER:**

This Revision is filed against the order dated 07.11.2022 in E.P.No. 5 of 2015 in O.S.No. 134 of 1988 on the file of the Senior Civil Judge's Court at Huzurabad.

2. The revision petitioner before this Court is the decree holder. It is their case that after passing the decree in a suit for injunction against the judgment debtors restraining them from interfering with the possession and enjoyment of an extent of Acs.3.03 guntas, the judgment-debtors deliberately and intentionally disobeyed the decree by interfering with the possession of the decree-holder by laying the foundation stone on 12.01.2015 for installation of Swamy Vivekananda Statue in the temple premises violating vastu. The temple Executive Officer also addressed the letter dated 22.12.2014 to the judgment debtor No.1 requesting not to disobey the orders of the Court. Despite such request, the judgment-debtors intentionally and deliberately disobeyed the decree. It is stated that the decree-holder was put to great inconvenience and loss to the property of the temple for which judgment debtors are liable to be put in civil prison under Order 21 Rule 32(1) C.P.C.

3. On behalf of the judgment debtors, a detailed counter-affidavit was filed that decree in the suit is an *ex parte* decree passed against the Nagar Panchayat, Jammikunta in a suit filed by the hereditary trustee and basing on such decree, filed the petition after limitation. It is stated that since the road surrounding the temple is being utilised and used by the general public and since there is connectivity of roads to various houses and colonies, as a part of development of colonies and towns, the judgment debtors constructed drainages and laid cement roads in the entire town connecting to roads besides the temple. The decree holder and his family members got partitioned the remaining land around the temple and making the same into plots and sold to various persons mentioning 50' panchayat road and on physical verification of the records, the officer accorded permission to the purchasers and all of them constructed houses by using the alleged road and therefore, the alleged interference does not arise and further, as it is barred by limitation, the E.P. is liable to be dismissed.

4. The Court below having considered the case of the judgment-debtors as well as the decree holder referring to Article 136 of the Limitation Act, which prescribes limitation for execution of decree as 12 years and as the decree was passed on

24.10.1989, the decree- holder should have filed the petition for execution of decree on or before 24.10.1991 and as petition came to be filed on 30.12.2014 which is beyond the period of limitation in terms of Article 136 of the Act, the Petition is clearly barred by limitation and the same is liable to be dismissed. It is also observed that the decree holder has tried to take shelter under Section 143 of the AP. Charitable and Hindu Religious Institutions and Endowments Act, 1987 and tried to submit that the law of limitation has no application. However, the Court below has observed that in the present situation the question is not about the property of the endowment but the question herein is executability of the decree and same comes under the purview of Article 136 of the Limitation Act. Therefore, the decree-holder cannot be permitted to take shelter under Section 143 of the Act. The Court below finally dismissed the petition stating that the execution petition is hit by law of limitation.

5. On 22.12.2022 this Court has ordered notice before admission and directed the petitioner to take personal notice. Learned counsel has taken out notice to Respondents 1 to 5 and filed proof of service. There is no appearance on behalf of the

respondents. Hence, this Court is inclined to proceed with the matter basing on the material available on record.

6. Learned counsel for the revision petitioner submits that the Court below ought to have appreciated the fact that the law of limitation will not apply to a charitable institution in the light of Section 143 of the Act. It is submitted that the Court below failed to appreciate that the petitioner's rights are sought to be taken away by a public body without obeying the decree and without having any right. It is submitted that the Court below ought to have seen that it is not the case of the respondents that the subject land belong to them. Then the Court below should have taken note of what is their right and authority. He submits that the permanent decree granted against the gram panchayat also operates against Nagar Panchayat which was later upgraded as Nagar Panchayat.

7. Revision Petitioner / decree holder has filed E.P.No. 5 of 2015 to execute the decree dated 24.10.1989. It is the case of the petitioner that even though a judgment and decree is passed in their favour, the respondents are violating the said decree, as such, for disobedience of the decree under Order 21 Rule 31 CPC., they have to be put in civil prison. The trial

Court having considered Article 136 of the Limitation Act has held that the Application is barred by limitation.

8. Heard Sri K.V. Bhanu Prasad, learned counsel for the petitioner and perused the entire material on record.

9. The issue that falls for consideration before this Court is whether the Application filed by the petitioner / decree holder is barred by limitation.

10. Before addressing the said issue, it is appropriate to have a look at Article 136 which reads as under:

“136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.

Period of limitation is Twelve years.

[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation”

11. A close perusal of Article 136 makes it clear that it refers to the execution of any decree other than a decree granting a mandatory injunction or order of any civil Court. Further proviso to Article 136 makes it clear that an application for enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. The

language employed in Article 136 of the Act makes it clear that limitation of 12 years for execution of any other decree will not apply to a suit for perpetual injunction. Admittedly, in this case, the decree passed in the year 1989 was a decree in a suit for permanent injunction. In that case, there is no limitation for filing the execution petition. Whenever there is violation or disobedience of the judgment and decree passed by the Court, the decree-holder can approach the Court for execution of the said decree. It is the case of the respondents before the Court below that the decree was an *ex parte* decree. Whether it is contested decree or an *ex parte* decree, unless and until an Application is filed and such decree is set aside, it is binding on the parties. The whole purpose of excluding the decrees of permanent injunction from the purview of Article 136 i.e. limitation of 12 years is when a suit for permanent injunction is decreed and till 12 years, the defendant keeps quiet and after 12 years, if the person starts interfering and taking shelter under Article 136, if it is held that the execution petition is beyond limitation, the decree-holder is left with no other remedy as they cannot file another suit. The decree holder's right to file execution accrues only when an obstruction / interference is caused. A person against whom a decree of permanent

injunction is granted is permanently barred from performing the act as per the decree. Hence, in the considered opinion of this Court, the Court below was wrong in holding that the execution petition is barred by limitation.

12. The order under Revision is therefore, set aside and the matter is remanded to the trial Court. The Court shall examine the Application i.e. E.P.No. 5 of 2015 on merits and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

13. The Civil Revision Petition is accordingly, allowed. There shall be no order as to costs.

14. The Miscellaneous Applications, if any shall stand automatically closed.

LALITHA KANNEGANTI, J

14th March 2023

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