
(2010) 03 AP CK 0077
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5578 of 2009

Jada Chennaiah

APPELLANT

Vs

Jada Venkata Subbaiah

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Limitation Act, 1963 — Article 135, 136

Citation : (2010) 4 ALD 20 : (2010) 3 ALT 633

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : J. Srinivasa Rao, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner filed O.S No. 188 of 1998 in the Court of the Junior Civil Judge, Nandalur against the respondent for the relief of perpetual and mandatory injunction vis-a-vis some items of the suit schedule property, viz; land in Survey No. 605/1. The suit was decreed on 20.3.2001, on contest. The respondent filed A.S. No. 26 of 2001 in the Court of the Senior Civil Judge, Rajampet and the appeal was dismissed on 17.9.2002. The petitioner filed E.P. No. 60 of 2007 with a prayer to execute the decree in so far as it relates to the mandatory injunction. The E.P. was opposed by the respondent. Through its order dated 19.9.2009, the Executing Court dismissed the E.P. as barred by limitation. Hence, this revision.

2. Sri J. Srinivasa Rao, learned Counsel for the petitioner submits that the decree is in three parts, namely, perpetual injunction, mandatory injunction and costs and the Executing Court was not justified in applying Article 135 though the E.P. was filed for enforcement of mandatory injunction as well as recovery of costs. According to the learned Counsel, Article 135 does not apply to relief of recovery of costs.

3. As observed earlier, the suit was filed for the relief of permanent injunction, to

restrain the respondent and his men from interfering with the possession of the petitioner over the suit schedule property and mandatory injunction directing the respondent to remove the pipeline laid across the land. The suit was decreed on 20.3.2001. Apart from granting the reliefs claimed, the trial Court has awarded also costs. The said decree became final with the dismissal of A.S. No. 26 of 2001 on 17.9.2002 by the Court of the Senior Civil Judge, Rajampet.

4. The petitioner does not appear to be having any problem as regards the enforcement of the decree for perpetual injunction. Obviously, because he is not facing any resistance from the respondent. However, he had a grievance about the failure on the part of the respondent in removing the pipeline as directed in the decree. Therefore, E.P. No. 60 of 2007 was filed on 20.8.2007.

5. The Limitation Act prescribes different periods of limitation for enforcement of decrees; for mandatory injunction on one hand, and other categories of decrees on the other hand. For the former, the limitation is three years under Article 135 and for the latter, i.e., decrees of other categories, the limitation is 12 years under Article 136 .

6. In the E.P., the trial Court took the view that the E.P. is barred by time and accordingly dismissed the same.

7. It is no doubt true that in Column No. 8 of the E.P., the petitioner has mentioned the amount of decree. However, in column No. 11, which deals with the nature of assistance, which the decree holder expects from Court, no mention is made about the recovery of costs. The concentration was only upon enforcement of the decree for mandatory injunction. Therefore, the E.P. was squarely covered by Article 135. The Executing Court referred to that Clause and dismissed the same. This Court is not inclined to take a different view.

8. The revision is accordingly dismissed. There shall be no order as to costs.