

## Smt. R. Latha Vs G. Narayana and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Sept. 13, 2012

**Citation:** (2012) 6 ALT 485

**Hon'ble Judges:** C.V. Nagarjuna Reddy, J

**Bench:** Single Bench

**Advocate:** Venkat Raghu Ramulu, for the Appellant;

### Judgement

@JUDGMENTTAG-ORDER

Hon"ble Mr Justice C.V. Nagarjuna Reddy

1. This civil revision petition arises out of order, dated 28.02.2012, in E.P. No. 45 of 2011 in O.S. No. 2720 of 2004, on the file of the learned X

Additional Junior Civil Judge, City Civil court, Hyderabad. I have heard Sri Venkat Raghu Ramulu, learned counsel for the petitioner, and perused

the record.

2. Even though notice was served on respondent No. 2, he has not entered appearance. Respondent Nos. 2 and 3 have entered appearance

through an advocate. However, at the hearing, their counsel is not present.

3. The petitioner filed the above mentioned suit for a decree to direct the respondents not to make any attempt to remove the common wall existing

in between the properties of the petitioner and respondents and to restrain them from putting any ventilators or windows towards her property with

a further direction to them to remove the windows and ventilators erected illegally, by way of mandatory injunction. The said suit was decreed by

the learned X Additional Junior Civil Judge, City Civil court, Hyderabad on 19.02.2009. A.S. No. 112 of 2009 filed by the respondents against

the said judgment and decree was dismissed by the learned XIV Additional Chief Judge, (FTC), City Civil Court, Hyderabad on 20.08.2010. The

petitioner, thereafter, filed the above mentioned EP for execution of the decree for removing the ventilators and windows projected towards her

house as shown in the red marked portion of the plan filed in the suit. Respondent No. 2 filed a counter affidavit, wherein it is inter alia averred that

the prayer in the execution petition is vague, improper and incorrect and that in the guise of removing the ventilators and windows of the

respondents/judgment debtors, the petitioner wants to demolish the compound wall existing in between the houses of the parties. It is further

averred that against the judgment in A.S. No. 112 of 2009, the respondents filed S.A. No. 1518 of 2010 in this Court which is stated to be

pending. The executing Court, as noted above, by its order, dated 28.02.2012, dismissed the said EP. A perusal of the order under revision would

show that the EP was dismissed on the reasoning that the executing Court cannot look into the plan filed in the suit and that as the petitioner failed

to show the number of windows and ventilators projected over her property and how many of them are to be removed, the decree cannot be

executed. It is further observed that the decree granted by the lower Court and the relief sought for by the petitioner are inconsistent and contrary

(sic ""mutually contradictory""). The decree in the suit is as follows:

1. That the suit of the plaintiff be and the same is hereby decreed restraining the defendants or anybody acting through them from removing the

common wall existing in between the properties of the plaintiff and defendants;

2. That the defendants are hereby directed to remove the ventilators or windows, if any, projected towards the house of the plaintiff by way of

Mandatory Injunction and

3. That there shall be no order as to costs of the suit.

4. The above re-produced decree would show in unequivocal terms that the lower Court has granted mandatory injunction for removal of the

ventilators and windows, if any, projected towards the petitioner's house. A perusal of the Appendix of evidence contained in the judgment in the

said suit would show that the petitioner filed Ex.A2, original plan. In execution petition, the petitioner has referred to the said plan and identified the

red marked portion in the said plan as filed in the suit. In the face of these facts, it is difficult to comprehend as to what is the inconsistency between

the EP and the decree that has been found by the executing Court. Significantly, in his counter affidavit, respondent No. 2 has failed to deny

existence of the windows and ventilators allegedly projected towards the petitioner's house. In the absence of any dispute relating to their

existence, I am unable to appreciate the approach of the executing Court in dismissing the EP in a casual and light hearted manner. Equally I find

no basis for the reasoning of the executing Court that in an execution petition it cannot look into the plan filed in the suit. When there is no dispute

with regard to the correctness of the plan and the suit is decreed which necessarily implies that the Court which decreed the suit has accepted the

correctness of the plan, there can be no legal impediment for the executing Court to rely upon the said plan filed along with the plaint. In the

counter affidavit of respondent No. 2, there is no whisper about the correctness or otherwise of the suit plan.

5. On a careful consideration of the facts, I am of the opinion that the executing Court has committed a serious jurisdictional error in dismissing the

EP. E.P. No. 45 of 2011 is, therefore, allowed subject, however, to the verification by the executing Court whether the decree in O.S. No. 2720

of 2004 has been stayed by this Court in the second appeal as pleaded by the respondents. If no such stay is in force, the executing Court shall

execute the decree as expeditiously as possible. Subject to the above directions, the civil revision petition is allowed. As a sequel to disposal of the

civil revision petition, C.R.P.M.P. No. 2161 of 2012 shall stand disposed of as infructuous.