

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 1187 OF 2015

ORDER:

This Revision is filed challenging the order dated 9.3.2015 in I.A.No. 1 of 2015 in C.M.A.No. 2 of 2015 of the VIII Additional District Judge, Chittoor District.

2. The petitioner herein is the plaintiff in the suit. The suit was filed by the petitioner against the respondent for perpetual injunction restraining the respondent from interfering with the possession and enjoyment of the plaint schedule property.

3. The petitioner filed I.A.No. 640 of 2014 under Order 39 Rule 1 & 2 CPC to restrain the respondent from conducting any prayers in the petition schedule Church till the disposal of the suit, not to interfere with the petitioner's peaceful possession and enjoyment thereof and to restrain the respondent from performing the prayers in the Church. In the said I.A., the petitioner marked Exs. P1 to P-19 and respondent marked Ex. R1 to R3. After contest, the said I.A. 640 of 2014 was allowed.

4. Challenging the same, the respondent filed CMA No. 2 of 2015 before the VIII Additional District Judge, Chittoor. Along with the appeal, he filed I.A.No. 1 of 2015 to stay the operation of the order of the trial Court in I.A.No. 640 of 2014, pending disposal of CMA. In the said application, it was specially contended that Ex.R2 and Ex. R3 filed by the respondent before the trial Court were not considered by the trial Court while deciding the I.A.No. 640 of 2014; and that it ought to have done so, having held in I.A.No. 640 of 2014 that the title was not established by both parties.

5. These arguments appealed to the Lower Appellate Court and it therefore, granted stay of operation of the temporary injunction granted by the trial Court in the petitioner's favour in I.A.No. 640 of 2014.

6. Challenging the same, this Revision was filed under Article 227 of the Constitution of India.

7. It is the contention of the counsel for the petitioner that the documents Exs. R2 and R3 do not prove the possession of the respondent at all and merely because they have not been considered by the trial Court, the Lower Appellate Court was not correct in staying the operation of the temporary injunction order granted by the trial Court.

8. Counsel for the respondent, on the other hand, contended that the order impugned in the Revision bring an interlocutory order in a pending appeal, this Court ought not to have entertained the Revision and it should direct the parties to get the appeal disposed of expeditiously because any observation on the merits while disposing of the Revision will prejudice either of the parties in the appeal.

8. I have noted submission of both sides. It is no doubt true that this Court granted interim suspension of the order passed by the Court below on 2.4.2015 in CRP MP No. 1623 of 2015 and while admitting the revision certain observations have also been made on merits by this

Court.

9. It is not disputed by the counsel for the petitioner that Exs R2 and R3 filed by the respondent in the trial Court have not been referred to. Therefore, *prima facie* I am of the opinion that the lower appellate Court did not commit any error in staying the operation of the temporary injunction order granted by the trial Court pending disposal of the appeal.

10. The contention now raised by the counsel for the petitioner is that these two documents do not establish the possession of the respondent. In my considered opinion, this is an aspect, which the Lower Appellate Court should consider while deciding the appeal and it would not be appropriate for this Court to express any opinion on the said issue either way. If this Court were to do so, it would amount practically deciding the CMA, which is pending before the Lower Appellate Court.

11. In this view of the matter, I am not inclined to interfere with the order dated 9.3.2015 in I.A.No. 1 of 2015 in CMA No. 2 of 2015 of the VIII Additional District Judge, Chittoor.

12. Accordingly, the Civil Revision Petition is dismissed. However, the said Court shall decide CMA No. 2 of 2015 within four weeks from the date of receipt of a copy of this order, on merits uninfluenced by any of the observations made in the order dated 22.12.2014 in I.A.NO. 640 of 2014, in the order dated 9.3.2015 in I.A.No. 1 of 2015 or the observations in the order dated 2.4.2015 in CRPMP No. 1623 of 2015 made by this Court.

13. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.06.2015

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Note: Furnish CC in one week.

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