

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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CIVIL REVISION PETITION No.4441 OF 2015

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ORDER:

Plaintiffs in O.S.No.39 of 2013 on the file of the Court of VII Additional District Judge, Ongole, are the petitioners in the present Revision Petition filed under Article 227 of the Constitution of India. The present revision challenges the order dated 23.07.2015 passed by the said court, allowing I.A.No.677 of 2015 filed under Section 151 of Code of Civil Procedure (herein after, 'CPC').

2. Petitioners herein filed O.S.No.39 of 2013 for partition and the suit is now coming up for trial. In the said suit, plaintiffs/petitioners herein filed I.A.No.364 of 2015 under provisions of Order 39 Rules 1 and 2 of CPC for injunction. Learned Additional District Judge granted an order of *Status-quo* on 07.04.2015 and the said *Status-quo* order is still subsisting.

3. Earlier, the respondents/defendants filed I.A.No.427 of 2015 under Section 151 of CPC, seeking permission to lay foundation stone in one of the items of the suit schedule property. The said application was dismissed as infructuous on 01.06.2015. Subsequently, the defendants/respondents filed the present I.A.No.627 of 2015 under Section 151 of CPC, seeking the same relief, asking permission to lay foundation stone. The learned Additional District Judge, by way of an order dated 23.07.2015, passed an order, allowing the said application. Calling in question the validity and legal sustainability of the said order, the present revision petition has been filed.

4. It is contended by the learned counsel for the petitioners that the order under revision is erroneous and contrary to law. It is also the submission of the learned counsel for the petitioners that in view of *Status-quo* order granted earlier in I.A.No.364 of 2015, the learned Additional District Judge erred in allowing the application.

5. On the contrary, it is contended by the learned counsel for the respondents that there is no illegality nor there is any procedural infirmity in the impugned order, as

such, the present revision petition is not maintainable and the petitioners herein are not entitled for any relief from this court under Article 227 of the Constitution of India. It is also the submission of the learned counsel for the respondents that the learned Additional District Judge is perfectly justified in passing the impugned order in view of the undertaking given by the defendant.

6. The material available before this court manifestly discloses that there is absolutely no dispute with regard to the reality that earlier in I.A.No.364 of 2015, filed by the petitioners under the provisions of Order 39 Rules 1 and 2 of CPC, the learned District Judge granted *Status-quo* order on 07.04.2015 and the same is still subsisting. Simply basing on the undertaking given by the defendant, the learned Additional District Judge passed the impugned order, allowing the application without considering the effect of the earlier *Status-quo* order granted by the court. In the considered opinion of this court, the same is unsustainable and the court below ought to have considered the effect of the earlier order before passing the impugned order. This court finds sufficient force in the contention of the learned counsel for the petitioners herein as regards the same.

7. For the aforesaid reasons, the revision petition is allowed, setting aside the order dated 23.07.2015 and the matter is remanded to the Court of VII Additional District Judge, Ongole, for fresh disposal after giving opportunity to the petitioners herein.

8. Miscellaneous petitions pending consideration, if any, in the Revision Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

17th November, 2015

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