

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.1862 of 2013

Between:

Smt. Domakonda Rajavva

.....Petitioner

and

Mohseen Raheem (died) and others.

.....Respondents

Date of Judgment pronounced : 18-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.1862 of 2013

ORDER:

Heard Sri K.Goverdhan Reddy, learned counsel for

the petitioner and Sri G.Chandrasekhar Rao, learned counsel for respondent Nos.2 and 4 to 8.

2. This Revision Petition is filed challenging the order dt.12-12-2012 in I.A.No.189 of 2006 in O.S.No.28 of 1981 of the Principal Junior Civil Judge, Nirmal.

3. Petitioner herein is 2nd defendant in the said suit. The respondent Nos.1 to 9 filed O.S.No.28 of 1981 for a perpetual injunction against the petitioner and others restraining the petitioner and others from interfering with their alleged possession and enjoyment of the plaint schedule property. This was opposed by the petitioner and other defendants. The suit was initially decreed on 30-11-1988.

4. Challenging the same, A.S.No.16 of 1989 was filed before the Subordinate Judge, Nirmal by the petitioner and other defendants. The said appeal was allowed and the decree granted in O.S.No.28 of 1981 was set aside. This was also confirmed in S.A.No.650 of 1992 on 26-04-2004 by this Court.

5. Subsequent thereto, the petitioner filed I.A.No.189 of 2006 contending that after the said suit was filed and temporary injunction was granted in favour of 1st respondent on 10-02-1981, 1st respondent and through him the other

respondent Nos.1 to 9, secured possession over the suit schedule land and 1st respondent was not in possession of the suit schedule prior to filing of the suit. Petitioner contended that after the judgment in the Second Appeal, since the respondent Nos.1 to 9 were in possession and enjoyment of the suit schedule property on account of certain Court orders obtained by them in the said litigation, she was deprived of enjoyment of the property and of mesne profits. She therefore sought mesne profits of Rs.1,08,000/- @ Rs.3000/- per month for a period of three years and future mesne profits also, invoking Section 144 CPC.

6. This application was opposed by 1st respondent stating that he was in possession of the suit schedule land from the date of purchase by him i.e. 20-12-1973 and he had never been dispossessed. He alleged that the petitioner was never in possession of the land and if she is in possession, she should file separate suit for recovery of possession.

7. By order dt.12-12-2012, the Court below dismissed the application. It held that when there is no delivery of property pursuant to any order of the Court, there cannot be any recourse to Section 144 CPC seeking restitution, and the remedy of the petitioner is only to file suit for recovery of possession and mesne profits. It observed that 1st respondent had not taken delivery of

property from the petitioner through Court on the basis of any order passed by the Court which came to be later set aside in appeal or revision and therefore by invoking Section 144 CPC, no relief can be sought by the petitioner.

8. Although the learned counsel for the petitioner sought to contend that the order passed by the Court below is erroneous and deserves to be set aside, since admittedly petitioner is 2nd defendant in the suit and she had succeeded in the said litigation by getting the injunction granted in favour of 1st respondent set aside in 1st appeal, which came to be confirmed in the second appeal as explained above, she cannot invoke Section 144 CPC and claim mesne profits in the suit. Such a relief can be asked only by a plaintiff in a suit for eviction and not by a defendant in a suit for injunction having succeeded in the said suit.

9. The application filed by the petitioner is totally misconceived and the Court below was therefore right in dismissing it.

10. Therefore, the Civil Revision Petition is dismissed. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-08-2015

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