

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

Civil Revision Petition No.2990 Of 2014

ORDER:

The plaintiff in O.S.No.2 of 2013 on the file of the Court of the Junior Civil Judge, Peddapalli, Karimnagar District, is the petitioner in the present revision filed under Article 227 of the Constitution of India. This revision calls in question the order, dated 15.07.2014, passed by the Court of the Senior Civil Judge, Peddapalli, dismissing C.M.A.No.4 of 2013. By virtue of the said order, the learned Senior Civil Judge confirmed the order passed by the Court of the learned Junior Civil Judge, Peddapalli in I.A.No.8 of 2013, filed by the petitioner/plaintiff under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'the Code').

Heard Sri Pottigari Sridhar Reddy, learned counsel for the petitioner, and Sri K.Venu Madhav, learned counsel for the respondents, apart from perusing the material available before this Court.

The circumstances leading to the filing of the present revision are as under:

The petitioner herein instituted O.S.No.2 of 2013, for perpetual injunction, in respect of the suit schedule land, admeasuring 250 square yards in survey Nos.605 and 606/1 of Christian Colony of Peddapalli Town and Mandal, Karimnagar District. In the said suit, the petitioner filed I.A.No.8 of 2013 under the provisions of Order XXXIX Rules 1 and 2, of the Code, seeking temporary injunction to restrain the defendants/respondents herein

from interfering with the possession and enjoyment. The said application was contested by the defendants/respondents herein by filing counter. The learned Junior Civil Judge, by virtue of an order, dated 20.08.2013, dismissed I.A.No.8 of 2013. Felt aggrieved by the said order, the petitioner/plaintiff filed C.M.A.No.4 of 2013 on the file of the Court of the Senior Civil Judge, Peddapalli, Karimnagar District. The learned Senior Civil Judge, by way of an order, dated 15.07.2014, dismissed the said appeal, confirming the orders passed by the trial Court.

Aggrieved by the said orders passed by the trial Court and the lower Appellate Court, the present revision has been filed under Article 227 of the Constitution of India.

It is contended by the learned counsel for the petitioner that the order under challenge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order XXXIX Rules 1 and 2 of the Code. It is further contended by the learned counsel that the Courts below did not take into consideration the material available and did not properly appreciate the documents filed by the plaintiff, especially Exs.P.9 & P.15. It is nextly contended by the learned counsel for the petitioner that, had the material available before the Court been considered from proper perspective, the orders impugned would not have emanated. It is further contended that since all the ingredients of Order XXXIX Rules 1 and 2 of the Code, namely *prima facie* case, balance of convenience and irreparable loss, are in favour of the petitioner/plaintiff, the Courts below grossly erred in rejecting the application filed by the petitioner for injunction.

On the contrary, it is argued by the learned counsel for the respondents/defendants that the orders passed by the Courts below are strictly in conformity with the provisions of Order XXXIX Rules 1

and 2 of the Code, and there is no illegality, nor any material infirmity in the said orders, as such, they are not amenable for any challenge by way of revision under Article 227 of the Constitution of India. It is further contended that since the Courts below thoroughly and meticulously considered all the documents and gave categorical findings, the present revision is not maintainable and is liable to be dismissed.

In the above background, now the issues, which this Court is called upon to answer in the present revision, are:

- (i) Whether the orders passed by the trial Court and the lower Appellate Court are in accordance with the provisions of Order XXXIX Rules 1 and 2 of the Code?
- (ii) Whether the orders under challenge require any correction by this Court under Article 227 of the Constitution of India?

It is a settled and well-established proposition of law that unless a person applying for injunction under the provisions of Order XXXIX Rules 1 and 2 of the Code, is able to establish, the existence of three ingredients namely, prima facie case, balance of convenience and irreparable loss, the applicant is not entitled for the relief under the said provisions of law. The issues in the present revision are required to be examined, in the light of the said settled proposition of law. In the instant case, the petitioner/plaintiff instituted the suit for perpetual injunction in respect of the land admeasuring 250 square yards in survey Nos.605 and 601 of Peddapalli Town and Mandal, Karimnagar District and along with the said suit, the present application i.e. I.A.No.8 of 2013 was filed, seeking temporary injunction to restrain the respondents from interfering with the possession and enjoyment over the suit schedule

property. The defendants/respondents opposed the said application by filing a counter. During the course of enquiry, the petitioner/plaintiff filed Exs.P.1 to P.10, whereas the defendants/respondents filed Exs.R.1 to R.58. The learned Junior Civil Judge, in the order impugned, considered all these documents and came to a categorical conclusion that the petitioner failed to establish prima facie case and balance of convenience and dismissed the application. The trial Court also took into consideration the impact of the proceedings in O.S.No.109 of 2010 and Exs.P.9 notarised affidavit, dated 02.07.2011, and the learned trial Judge also recorded reasonable findings at paragraphs 9 to 11 and opined that the petitioner is not entitled for any relief as prayed.

As against the orders passed the learned Junior Civil Judge, the petitioner carried the matter in C.M.A.No.4 of 2013. During the course of enquiry before the lower Appellate Court, the plaintiff filed Exs.P.11 to P.17 and respondents filed Exs.R.59 to R.73 as additional evidence. A perusal of the order passed by the learned Senior Civil Judge candidly demonstrates that the learned Appellate Judge also thoroughly and meticulously considered the impact of the documents made available and arrived at a conclusion that the petitioner is not attached for the equitable relief of injunction. Since both the Courts reached the conclusion and recorded the findings based on the material available and as the petitioner has failed to point out any jurisdictional error or patent infirmity in the orders impugned, this Court is not inclined to meddle with the orders under challenge.

For the aforesaid reasons, the Civil Revision Petition is dismissed, confirming the orders passed by the Courts below. It is made clear that the trial Court shall dispose of the suit, without being influenced by the observations made in the impugned orders and in

the present order. No order as to costs.

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

JUSTICE A.V. SESA SAI.

28.01.2015

GJ