

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CIVIL REVISION PETITION No.406 of 2015

Between:

K.B.V.Srinivas

....Petitioner

and

Zianuddin Arif

....Respondent

JUDGMENT PRONOUNCED ON : 29.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?

2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to : No

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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ORDER:

The petitioner is the plaintiff in O.S.No.172 of 2012 on the file of the learned Principal Junior Civil Judge, Visakhapatnam. The said suit was filed for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule shop of an extent of 37.70 square yards situated in the cellar floor bearing door No.47-15-6 of Allipuram Ward within the limits of Greater Visakhapatnam Municipal Corporation. The plaintiff claims to have purchased the first floor of the schedule building by way of a registered sale deed dated 31.03.2010 and subsequently he purchased the cellar portion under an agreement of sale dated 18.02.2012 from the original owner, Smt.K.Jyothi. It appears that a registered sale deed was executed later on 23.06.2012 and in order to incorporate the said fact, the petitioner-plaintiff filed I.A.No.336 of 2014 seeking amendment of the plaint. A counter affidavit was filed stating that the present petition was filed after two years of purchase and the petitioner is trying to build up a new case by way of amendment at a belated stage. The structures made by him in the cellar portion are illegal constructions.

The trial Court dismissed the application stating as follows:

"It is settled principle of law that the transaction during pendency of suit would have no legal sanctity and the person who obtained sale deed cannot be treated as holder of legal enforceable right. As per the plaint pleadings, the plaintiff entered into an agreement of sale on 18.02.2012 with one K.Jyothi in respect of suit schedule property. The present suit is filed on 28.02.2012. Moreover the suit is for bear injunction in which the possession of the plaintiff only can play vital role. But the petitioner filed another petition IA 515/2014 to amend the plaint for seeking Mandatory Injunction and the said petition is allowed by this court. The rights of the parties over the suit schedule property

will be decided conclusively after full fledged trial in the suit. Merely because the subsequent transaction entered into by the petitioner and accordingly because the same is inserted in the plaint, the petitioner cannot claim any relief basing on the said transaction, since it is executed during pendency of the suit even as per the contention of the petitioner. Therefore, the petitioner cannot claim any relief in the main suit basing on the sale deed said to have been executed during pendency of the suit by the plaintiff with K.Jyothi. Since the petitioner's right cannot be treated as legal enforceable right as "Purchaser Pendante Lite" inserting the said sale deed in the plaint would serve any valid purpose. Therefore, the petitioner is not entitled to seek amendment in the present petition. Accordingly this point is answered against the petitioner."

Challenging the order in I.A.No.336 of 2014, dated 20.11.2014, the present Civil Revision Petition is filed.

As stated above, the suit is filed for permanent injunction and the title of the parties will be incidentally enquired into for the purpose of granting relief. The title of the parties will not be conclusively decided in the suit for permanent injunction. In a suit for permanent injunction, the facts which are existing on the date of filing of the suit are relevant. In view of the same, the observations made by the trial Court are correct and it does not warrant any interference.

The Civil Revision Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

29.12.2015

vs

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