

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.4482 and 4483 of 2012

ORDER :

Since these two Civil Revision Petitions are filed challenging the common order dt.30.11.2011 in I.A.No.411 of 2011 and I.A.No.412 of 2011 in O.S.No.35 of 2007 of the A.P. State Wakf Tribunal, Hyderabad, they are being disposed of by this common order.

2. The petitioner herein is the 1st plaintiff in the above suit. The said suit was originally filed by the petitioner and the 2nd respondent against respondents 1 and 3 to 5 seeking perpetual injunction restraining them from interfering with his alleged possession and enjoyment of an Ashurkhana in premises No.6-4-182, Machili Bazar, Warangal and also restraining them from encroaching or changing the nature of land or raising any construction or interfering in the construction of compound wall.

3. In the said suit, petitioner and 2nd respondent also filed I.A.No.254 of 2007 seeking interim injunction and the Court below granted ex parte injunction on 08.05.2007, which was later extended until further orders on 21.07.2007.

4. The 1st respondent herein subsequently filed I.A.No.274 of 2006 to implead her as 4th defendant in the suit. She contended that she is the owner and possessor of an adjacent house to the plaint schedule property, i.e., house bearing No.6-4-131 (6-4-184 New), Machili Bazar, Hanamkonda, Warangal, that the petitioner, with an ulterior motive, had damaged the compound wall and is trying to enter into her property taking advantage of her absence in Warangal as she is residing at Hyderabad. She also contended that petitioner is not

allowing her tenants to enter into her premises; that on 10.10.2011 without any permission from the Tribunal or without any authority, the petitioner dismantled the compound wall on the side of the 1st respondent's property and erected a door facing towards her land in order to cause inconvenience to her and to her tenants without having any right; that the petitioner is trying to encroach into her property under the guise of the interim injunction; and that he cannot be allowed to do so and change the physical features of the subject property.

5. The claim of the 1st respondent was not only not opposed by the petitioner/1st plaintiff, who is also representing the 2nd respondent-Wakf institution in the capacity of Mujawar/care-taker, but he reported no objection. Therefore, the Tribunal allowed the said application on 17.09.2008.

6. Then, the 1st respondent filed I.A.No.411 of 2011 under Order XXXIX Rules 1 and 2 CPC seeking a direction to the petitioner to restrain him from closing entry towards the land of the 1st respondent and other respondents pending disposal of the suit. She also filed I.A.No.412 of 2011 to restrain the petitioner from interfering with the peaceful possession of her property pending disposal of the suit.

7. Counter affidavit was filed by the petitioner opposing these applications. He denied the title of the 1st respondent to the premises bearing No.6-4-131(old) as well as opening of any door way into the compound wall of Ashurkhana towards the property of the 1st respondent. He also denied about demolishing the compound wall and trying to encroach the property of the 1st respondent.

8. By order dt.30.11.2011, the Court below allowed both the applications.

9. It held that the 1st respondent had been impleaded by the Tribunal as 4th defendant in the suit on 17.09.2008 on the petitioner and 2nd respondent reporting no objection for her impleadment. It observed that the petitioner and 2nd respondent had impleaded the 5th respondent as 3rd defendant in the suit and obtained the order of interim injunction, though he had nothing to do with the subject property, without impleading the 1st respondent, who was the proper and necessary party. It observed that even after the impleadment of the 1st respondent, the petitioner and 2nd respondent had not obtained any fresh order of injunction against her. It took note of the fact that in the chief examination affidavit of PW1 filed by the petitioner, he had categorically admitted that after obtaining interim orders against the original defendants 1 to 3/respondents 3 to 5, he had completed construction of compound wall and there is no allegation that respondents 3 to 5 made any obstruction for construction of compound wall after the injunction order was obtained. It held that the 1st respondent filed three photographs which indicate that recently a door towards the compound wall of the 1st respondent had been opened, but the petitioner or the 2nd respondent had nowhere alleged that they had a right to open the door towards the property of the 1st respondent. IT held that this act of the petitioner and 2nd respondent has to be considered as not lawful, since it affects the easementary rights of the 1st respondent, who is his neighbour and that her title to the property is not in issue in the present suit. It therefore, allowed both the applications.

10. Challenging the same, these Revisions are filed.

11. Counsel for the petitioner has contended that the order passed by the Court below in both these applications is unsustainable; that the relief sought in I.A.No.411 of 2011 is in the nature of a mandatory injunction, since the 1st respondent had sought closure of entry towards her land pending trial of the suit and it is outside the scope of the suit; that there is no evidence to show that the door way had been opened at all, and the photographs filed before the Court below could not have been relied upon by it, in the absence of supporting evidence.

12. Counsel for the 1st respondent however refuted the above contentions and supported the order passed by the Court below.

13. From the facts narrated above, it is clear that the 1st respondent had alleged that she was deliberately not impleaded in the suit by the petitioner and the 2nd respondent and persons unconcerned have been impleaded. She also alleged that after obtaining a temporary injunction order in the suit, the compound wall separating her property from the suit schedule property was demolished and on 10.10.2011 a door was erected facing her land.

14. Admittedly PW1, in the course of his evidence, had admitted that, after obtaining the interim orders against respondents 3 to 5 only, he had completed the construction of compound wall. It is not denied by the counsel for the petitioner that the 1st respondent had not been impleaded in the application filed seeking interim injunction i.e., I.A.No.254 of 2007. It is also not denied by him that respondents 3 to 5 had not done anything after interim injunction order was obtained restraining interference with the construction of the compound wall.

15. As rightly held by the Court below having obtained an interim injunction by not impleading the 1st respondent and impleading

respondents 3 to 5 (who appear to have no concern with the subject property), the petitioner misused the process of law and demolished the compound wall between the property of the 1st respondent and the petitioner & 2nd respondent. It was never the case of the petitioner and the 2nd respondent that they were entitled to open a door way towards the property of the 1st respondent. Therefore, it is not open to the petitioner to take undue advantage of the order of temporary injunction obtained by him pending suit by not only demolishing the compound wall which is separating the properties of the 1st respondent and the petitioner, but also by erecting a door way therein.

16. It is settled law that the power under Article 227 of the Constitution of India has to be exercised to keep subordinate Courts within the bounds of the jurisdiction and the said remedy is available only when error is manifest and apparent on the face of the record or there is gross failure of justice or gross injustice has been occasioned thereby. (See ***Surya Dev Rai v. Ram Chander Rai***).

17. In my considered opinion, Courts must prevent perpetration of a legal fraud and promote good faith and equity. Jurisdiction of the Courts should not be exercised merely because it is lawful to do so, and it must advance the cause of justice and shall not cause failure of justice. A party who does not come to the Court with clean hands, cannot claim equity (see [***Ritesh Tiwari and another vs. State of Uttar Pradesh and others***](#)).

18. Since the petitioner, as rightly held by the Court below, had tried to overreach the Court below and 1st respondent after obtaining an interim injunction against persons who are unconcerned with the subject property (by deliberately not impleading the 1st respondent

and erecting a compound wall and doorway therein), the petitioner cannot claim any equity and rely on technical objections to defeat substantive justice.

19. As observed by the Court below when the photographs were produced about the compound wall erected by the petitioner with the door way, no reply was given by the petitioner or 2nd respondent thereto and they did not deny the same. If they had any doubt about the genuineness of the photographs, they could have insisted the Court below to appoint an Advocate-Commissioner to verify the allegations of the 1st respondent. Since the 1st respondent had been affected by the action of the petitioner in overreaching the order passed by the Court below, it cannot be said that the Court below had committed any mistake in restoring status quo order pending disposal of the suit.

20. In my considered opinion, the conduct of the petitioner, as pointed out by the Court below, does not warrant any indulgence in exercise in his favor of revisional jurisdiction of this Court under Article 227 of the Constitution of India.

21. Therefore, these two revisions are dismissed with costs of Rs.2,000/- payable to the 1st respondent by the petitioner.

22. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

28th August, 2015.

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