

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.2930 of 2010

ORDER:

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This Revision petition is filed challenging the order dt.24.02.2010 in C.M.A.No.86 of 2006 of the I Additional Chief Judge, City Civil Court, Secunderabad, confirming the order dt.12.07.2006 in I.A.No.302 of 2006 in O.S.No.352 of 2006 of the

I Junior Civil Judge, City Civil Court, Secunderabad.

2. The petitioners herein are the defendants in the above suit. The respondents/plaintiffs filed the suit against the petitioners for permanent injunction restraining the petitioners from interfering with their possession and enjoyment of the plaint schedule property, which is a house bearing No.1-19-63 at Rasoolpura, Secunderabad Cantonment.

3. Along with the plaint, the respondents herein filed I.A.No.302 of 2006 under Order XXXIX Rules 1 and 2 C.P.C. seeking temporary injunction against the petitioners to restrain them from interfering with the alleged possession of the petitioners pending suit.

4. The case of the respondents is that the plaint schedule property originally belonging to the 1st respondent and the father of the 1st respondent constructed a house and thereafter the 1st respondent executed a registered gift deed (Ex.P.1) dated 13.07.2005

in favour of the 2nd respondent and his brothers-respondent Nos.3 to 6; and they are in continuous possession and enjoyment of the plaint schedule property and carrying on potato chips business since 1970. They also claimed to have a trade licence (Exs.P.11 and P.12) from the Secunderabad Cantonment Board. The respondents further contended that the petitioners, who are residents of the same area, who having no right, title or interest in the property, were attempting to interfere with the respondents' peaceful possession and enjoyment of the property and on 10.03.2006 and 12.03.2006 they attempted to trespass into the plaint schedule property.

5. Counter-affidavit was filed by the petitioners herein contending that the plaint schedule property belongs to the father of the petitioners by name P.Pentaiah. It was alleged that the said Pentaiah constructed a house with the permission of the Cantonment Board. It was contended that two rooms in the schedule property were let out to the 1st respondent by the petitioners and one room each was given to two other tenants and rest of the premises was in their possession and enjoyment. It was further alleged that the mother of the 1st petitioner executed a gift settlement deed (Ex.R.68) dated 18.05.2005 in favour of the 1st petitioner.

6. By order dt.12.07.2006, the trial Court in I.A.No.302 of 2006 granted temporary injunction restraining the

petitioners from interfering with the possession and enjoyment of the respondents from the plaint schedule property.

7. Questioning the same, the petitioners filed C.M.A.No.86 of 2006 before the I Additional Chief Judge, City Civil Court, Secunderabad. The appellate Court has dismissed the appeal on 24.02.2010.

8. Challenging the same, this Revision is filed.

9. Learned counsel for the petitioners contended that there was an order of status quo granted by this Court on 16.07.2010 and the same may be directed to be maintained till the disposal of the suit. He also contended that the trial Court erred in granting temporary injunction restraining the petitioners from interfering with the alleged possession and enjoyment of the plaint schedule property by the respondents. It is the specific case of the petitioners that only two rooms were in possession of 1st respondent, that even these two rooms were let out by him and the rest of the premises were in possession of the petitioners. Learned counsel for the petitioners, therefore, contends that on the basis of the material filed by the petitioners before the trial Court, the trial Court should have dismissed I.A.No.302 of 2006.

10. Learned counsel for the respondents on the other hand contended that both the Courts have concurrently found that the petitioners are not in possession of the plaint schedule property and the respondents are in

possession thereof; these concurrent findings were arrived at by the Courts below after appreciation of evidence; and in exercise of the limited jurisdiction under Article 227 of the Constitution of India, this Court ought not to interfere with those findings.

11. I have noted the respective submissions of the counsel for the parties.

12. The plaint schedule property as described by the respondents/plaintiffs is having a municipal No.1-19-63. The petitioners have admitted in the counter-affidavit filed by them in I.A.No.302 of 2006 that two rooms therein are in possession of the 1st respondent. The respondents have filed not only Ex.P.1-registered gift deed executed by the father of the 2nd respondent in their favour, but also trade licence renewals Exs.P.11 and P.12 apart from income tax returns showing that the plaint schedule property is in their possession.

13. The petitioners on the other hand filed Ex.R.68-gift settlement deed dated 18.05.2005 executed by the mother of the 1st petitioner in favour of the 2nd petitioner apart from electricity bills. After perusing these electricity bills, the trial Court held that the bills pertain to house bearing No.1-9-63 and not 1-19-63. It also pointed out that the address of petitioners in plaint was given as 1-19-120 and the building permission in Form-A (Ex.R.1) mentions the house No.1-19-120 and Ex.R.2 notice in

Form-B mentions the house No.5-103. It therefore came to the conclusion that the documents filed by the petitioners do not prove their possession of the plaint schedule property and that it is for the petitioners to prove that house No.5-103 is the old number and House No.1-19-63 is the new number. The appellate Court has confirmed these findings.

14. Learned counsel for the petitioners has not been able to dispute the correctness of these findings of the trial Court as well as the appellate Court.

15. The trade licence produced by the respondents and the admission of the petitioners that two rooms are in possession of respondents suggest that the respondents are prima facie in possession of the property. Since the electricity bills produced by the petitioners contain a different door number from that of the plaint schedule property, prima facie it has to be held that these bills do not pertain to the plaint schedule property.

16. In this view of the matter, I am of the opinion that the concurrent findings of the both the Courts holding that the respondents are in possession of the plaint schedule property and not the petitioners are not liable to be disturbed in view of the limited jurisdiction conferred on this Court under Article 227 of the Constitution of India. So, I find no merits in the Revision and the same is liable to be dismissed.

17. Accordingly, the Civil Revision Petition is

dismissed. However, it is made clear that the trial Court shall decide the suit un-influenced by any of the observations made in I.A.No.302 of 2006 or C.M.A.No.86 of 2006 or this order of this Court. No costs.

18. Miscellaneous Petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

11th June 2015

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