

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

C.R.P.No.3742 of 2015

ORDER:

Heard Sri K.Venumadhav, learned counsel for the petitioner and Sri Chakravarthi, learned counsel for 6th respondent.

2. This Revision Petition is filed challenging the order dt.04-08-2015 in I.A.No.320 of 2014 in O.S.No.71 of 2010 of the Principal Junior Civil Judge, Medchal, Ranga Reddy District.
3. Petitioner herein is the plaintiff in the suit. He filed the said suit against the respondents seeking a mandatory injunction for removal of a wall allegedly constructed by the respondents in the middle of the suit schedule road an extent of 15' in Sy. No.100 of Nizampet village which is to the east of his plot.
4. He filed I.A.No.320 of 2014 under Order 39 Rules 1 and 2 CPC to restrain the respondents from making any sort of obstruction over the suit schedule road pending disposal of the main suit.
5. Counter affidavit was filed by 6th respondent stating that the petitioner has not come to the Court with clean hands and that earlier petitioner had filed I.A.No.332 of 2010 which was not disclosed. He contended that the relief of mandatory injunction is the substantive relief sought by the petitioner and it cannot be granted without the petitioner also praying for relief of declaration of his right in the property. He stated that there is only 6 ½' lane giving access to the petitioner's property and there is no 15' road existence as alleged in the plaint at any point of time. He also stated that 6th respondent is the owner of the property in respect

of which the petitioner is claiming easementary rights without any basis and no injunction can be sought against the true owner.

6. By order dt.02-06-2014, the trial Court granted interim injunction but the same was set aside in C.M.A.No.63 of 2014 vide order dt.04-08-2015 by the XVI Additional District Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.
7. Challenging the same, this Revision Petition is filed.
8. Learned counsel for the petitioner contended that the trial Court, after considering the merits of the case and the contentions of both sides, had rightly granted temporary injunction in favour of the petitioner. But the appellate Court had incorrectly set aside the same. He contended that access to the petitioner's plot is being attempted to be blocked by the respondents and if that is allowed to happen, there would be no way for the petitioner to reach the plot purchased by him.
9. Learned counsel for 6th respondent contended that an interim relief can be sought in a suit only in aid of main relief, and since the petitioner had not sought relief of a perpetual injunction restraining the respondents from interfering with the 6 ½' road to the south of the petitioner's plot, it was not open to the petitioner to file I.A.No.320 of 2014 to restrain the respondents from making any sort of obstruction over the road in question, pending disposal of the suit.
10. I find considerable force in the contention of the learned counsel for 6th respondent. An interim relief will only be in aid of a main relief and without seeking a perpetual injunction

restraining the respondents from obstructing the road in question in addition to the relief of mandatory injunction sought for in the plaint, it is not open to the petitioner to seek a temporary injunction restraining the respondents from putting up any obstructions in the road in question.

11. Therefore I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. However this will not preclude the petitioner, if he is so advised, to seek appropriate amendment to the plaint. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-09-2015

kvr