

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.4645 OF 2015**

**ORDER:**

This Civil Revision Petition is filed challenging the order dated 21.09.2015 in I.A.No.487 of 2015 in I.A.No.622 of 2006 in O.S.No.13 of 2003 passed by the Principal Senior Civil Judge, Rajampet.

The petitioners herein are defendants 3 and 4 in O.S.No.13 of 2003 filed by the 1<sup>st</sup> respondent/plaintiff herein against them and respondents 2 and 3 herein, who are defendants 1 and 2 therein. The said suit was filed for partition of the suit schedule property. Pending the suit for partition, there was temporary injunction restraining alienation obtained against defendants by plaintiff. It appears that there was alienation by the defendants for some extent of the plaint schedule property in violation of injunction order, application in I.A.No.622 of 2006 was filed under Order 39 Rule 2(a) C.P.C. to prosecute the defendants for violation of temporary injunction order and the same was ordered in favour of the plaintiff vide its order dated 12.08.2008. Aggrieved by the same, defendants 3 and 4 preferred C.M.A.No.824 of 2008 and this Court vide its order dated 13.04.2011 allowed the CMA by setting aside the order in I.A.No.622 of 2006 and remanded back the matter directing the trial Court to record oral evidence between the parties to dispose of petition on merits there from. While so, the suit trial was in progress since 2008 it appears PW.1 was examined from time to time including on 28.10.2011 and it is posted for further examination of plaintiff side, this

application was closed by the trial Court on 19.10.2012 after PW.1 examination. The observation is witness examined on behalf of plaintiff in the suit and the petition is closed for the present. In fact, by that time it appears there is further evidence also in progress. Impugning the said order, I.A.No.487 of 2015 is filed by the plaintiff and the trial Court allowed the application by impugned order dated 21.09.2015 to restore I.A.No.622 of 2006. The observation therein is, it was closed inadvertently and it is contended that necessary to reopen I.A.No.622 of 2006 for further evidence on behalf of the plaintiff since closed on 19.10.2012, the plaintiff/petitioner will suffer irreparable loss and hardship and hence to reopen. It was in fact opposed by the revision petitioners as respondents/defendants saying it is a belated one and there

is a deemed consent to the closure for not even asking to reopen immediately having allowed for more than two years such closure order to remain, belatedly filed this application to reopen even it is a dispute between sister and brother practically (defendants and plaintiff) and thereby the order is unsustainable. In fact the order is closed for the present, it is to say practically for statistical purpose. The order is not even contemplated without filing joint memo by the parties not pressing the petition relief, that too, when there is a direction by this Court in C.M.A.No.824 of 2008 to record oral evidence and to decide so called violation on merits and such closure is contrary to the High Court's order otherwise. Apart from it, the same closed statistically to mean with right of reopen. It is also for the reason

based on the latin maxim *Actus Curiae Neminem Gravabit*, means, 'an act of the Court shall prejudice no man' unless sanctioned by law. Thereby the lower Court committed no illegality or irregularity for this Court while sitting in revision under Article 227 of the Constitution of India to interfere.

Accordingly, before admission, this Civil Revision Petition is dismissed. There is no order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

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**Dr. B. SIVA SANKARA RAO, J**

**Date:03-11-2015**

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