

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

C.R.P.No.5119 of 2014

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ORDER:

Heard.

The petitioner herein is the plaintiff in the suit in O.S.No.13 of 2008 on the file of the I Additional Junior Civil Judge, Ongole. The said suit was filed by the petitioner seeking permanent injunction against the defendants/respondents herein alleging that he is in exclusive possession of the suit schedule property as shown in the plaint schedule therein. The petitioner also filed I.A.No.30 of 2008 seeking temporary injunction. The court below, by order, dated 28-11-2011 granted injunction in favour of the petitioner. However, that order was questioned by the respondents herein in C.M.A.No.37 of 2012 before the II Additional District Court, Prakasam at Ongole. Under the impugned order, dated 25-09-2014, the said appeal was allowed. Hence, this revision.

Learned counsel for the petitioner has brought to the notice of this Court the findings rendered by the lower court while granting injunction as set out in para '18' of the order and the learned counsel submits that the lower appellate court has reversed the said order without appreciating Exs.P-1 to P-7.

No doubt, the trial court has placed reliance upon Exs.P-1 to P-7 produced by the petitioner and also the evidence on record and found *prima facie* case in favour of the petitioner. However, it is not disputed that the petitioner and the 1st respondent are brothers and children of one Sri G.Kotaiah and the property admittedly belonged to G.Kotaiah. The petitioner and the respondents, therefore, are in the capacity of co-owners and in the absence of any proof of partition among them, one co-owner cannot seek injunctive relief against the other co-owner as it cannot be said that which portion of the land or property has fallen to whose share. The lower appellate court, therefore, rightly found that all those aspects are required to be gone into the suit after trial and at this stage, it cannot be said that the petitioner is in exclusive

possession of the land, as possession of one owner is deemed to be possession of all. I do not find any reason to interfere with the impugned order particularly as the lower appellate court, while allowing the appeal directed that status-quo shall be continued till disposal of the suit. Hence, the said order of status-quo to be continued pending the suit. Since the suit is of the year 2008, the trial court shall expeditiously conduct the trial and dispose of the suit by the end of December, 2015.

Accordingly, the civil revision petition is disposed of. No order as to costs.

Miscellaneous applications, if any, shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 08-04-2015

Prv

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