

HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No. 316 OF 2012

JUDGMENT:

This appeal is preferred questioning the order and decree dated 22.11.2011 in I.A. No. 623 of 2011 in O.S.No. 256 of 2011 on the file of Additional Senior Civil Judge, Ongole.

2. Appellant herein is second defendant in the above referred suit and first respondent herein is plaintiff and second respondent herein is first defendant.

Suit is filed for declaration of cancellation of half of the registered sale deed dated 13.2.2006 executed by first respondent in favour of second defendant, to the extent of plaint schedule property and for consequential direction directing the second defendant to deliver vacant possession. In that suit I.A.No. 623 of 2011 is filed to restrain the respondent from proceeding with further construction from raising structures in the suit schedule property, pending disposal of the suit, in which the impugned order is made.

3. Heard both sides.

4. Advocate for appellant submitted that the appellant is mainly aggrieved with the direction that the

appellant should file an undertaking before the Court and that he should pull down the structures in case plaintiff succeeds in the suit. He submitted that the Court below having recorded the fact that the entire construction was over by the date of passing the impugned order instead of dismissing the application as infructuous gave such direction and the same has to be set aside.

5. Advocate for first respondent /plaintiff submitted that the appeal can be disposed of by setting aside the said direction recording that the constructions made are subject to the result of the suit.

6. Considering the submissions of both sides and considering the facts of the case, I deem it appropriate that the direction given by the Court below to the appellant to file an undertaking is unwarranted and the same is liable to be set aside. However, since constructions were completed even before the impugned order is passed, it is made clear that those constructions shall be subject to the outcome of the suit. The trial Court shall dispose of the suit as expeditiously as possible.

7. With above direction, this Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE S. RAVI KUMAR

DATE: 19.07.2016.
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