

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4998 of 2012

ORDER :

The revision petitioner is respondent No.1 in I.A.No.255 of 2012 in the pending petition for final decree in I.A.No.486 of 2010 pursuant to the partition preliminary decree in O.S.No.111 of 2002 on the file of the XVII-Additional Chief Judge, City Civil Courts, Hyderabad.

2. I.A.No.255 of 2012 is filed by respondent Nos.1 and 2 herein as preliminary decree holders, under Section 151 C.P.C. to restrain the revision petitioner as respondent No.1, Little Flock Ministries, who is respondent No.4 herein as respondent No.3 and one M.P.Shyala Hayward, who is respondent No.3 herein as respondent No.2, from making any constructions in item B of schedule-I of immovable properties bearing MCH No.8-3-231/a/72/1, which is part of the preliminary decree schedule. It is on contest by the respondents/judgment debtors in opposing the prohibitory temporary injunction application pending finalization of the final decree proceedings in saying they are not making any permanent constructions, but for temporary constructions, particularly from counter affidavit at para 2, that too, to accommodate the persons coming weekly thrice or four times for attending the religious prayers in the premises temporarily and thereby there are no grounds to grant temporary injunction to prevent the temporary construction in nature. The lower Court having considered the matter, on 29.08.2012 granted temporary injunction restraining respondents/judgment debtors from making any constructions

or raising anything on the existing constructions in relation to the suit property until further orders. It is impugning the same, present revision is filed.

3. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/Judgment Debtor No.1 is almost same as reiterated in the counter contest referred supra that the lower Court did not apply its mind since the fact that there are no permanent constructions being made, but for any temporary in nature and Section 151 C.P.C. has no application, but for Order XXXI Rules 1 and 2 of C.P.C. and the relief granted is thereby unsustainable, hence to set aside the order.

4. Whereas, the contention of the learned counsel for the respondent Nos.1 and 2 herein, who are successful petitioners covered by the impugned order before the lower Court, is that the order is well considered and reasoned one including by considering the report filed by the Advocate Commissioner when sought in I.A.No.139 of 2014 to note the existing physical features including the nature of construction made, thereby there is nothing to interfere apart from that respondent Nos.1 and 2/decree holders are taking recourse to the violation of injunction and it is there own obtaining of injunction to pass against passing of final decree sought in I.A.No.486 of 2010 and having obtained an injunction to maintain existing *status quo*, but for passing of final decree for the proceedings shall go on violated and making constructions, the lower Court is right in passing orders and even Section 151 C.P.C. can be

availed to grant injunction by the lower Court apart from mere wrong quoting of provision is no way fatal, hence to dismiss the revision.

5. Heard and perused the material on record.

6. Undisputedly, I.A.No.486 of 2010 is filed by respondent Nos.1 and 2/decree holders for partition of subject matter of the property pending against passing of final decree. On the other, A.S.No.345 of 2009 is filed by revision petitioner and respondent No.4 herein, who are Judgment Debtor Nos.1 and 3, and in that they filed A.S.M.P.No.1082 of 2008, wherein this Court on 25.06.2009 granted stay of passing of final decree, but for the enquiry shall go on including for division by the Advocate Commissioner. It appears from the record, the Commissioner filed report. When such is the case, without any specific permission before obtaining, no party to the lis, which is subject matter of the preliminary decree schedule from rights already defined, to be worked out in the pending final decree application to make any type of constructions either temporary or permanent, once such is the case, they cannot be allowed to take law to their hands, much less to claim that what the constructions they are going to make is temporary in nature or that it is required for those persons attending the prayers. Further, it is to say that the inherent power under Section 151 C.P.C., every Civil Court from its very constitution with all its elasticity as required, necessity to pass any order either to implement the orders of the Court in force or to prevent abuse of process or even to sub-serve the ends of justice. No doubt, what the rider provides is, when there is a specific provision

unless it is shown that the specific provision has no coverage to the claim, the general provision within the scope of inherent power cannot be invoked. However, the law is fairly settled that mere wrong quoting of a provision is no way fatal including from the expression of this Court in **Nicholas Piramal India Limited vs. Cultor Food Science Inc. and ors**¹, it is clearly held therein that even a wrong provision is quoted from the mention of Section 151 C.P.C. within its inherent power, the Court has to treat the provision of law as if correctly mentioned. Further, the Apex Court way back in **Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal**² well settled the law that either to take recourse for violation of injunction or to restore actions by *status quo* anything done obdurate, the orders of the Court or even to grant injunction the inherent power is there which inheres in other civil Courts. This Court in **Cheedella Padmavati (died) by L.Rs. vs. Cheedella Laxmi Narasimha Rao (died) by L.Rs**³, at para 12(b) clauses 5 to 7, discussed the scope of inherent power which inheres in every Court to set right fact or to take or to consider any application even filed with a wrong provision.

7. Having regard to the above, there is nothing to interfere with the impugned order in restraining the revision petitioner from making any type of construction additional or even on the existing or further.

8. Accordingly, the revision is dismissed.

¹ AIR 2003 AP 254 = 2003 (1) ALT 312

² AIR 1962 SC 527

³ 2015 (5) ALT 635

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

27th September 2016.

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