

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1209 OF 2016

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ORDER:

It is a revision, filed under Article 227 of the Constitution of India, filed by the plaintiff in O.S.No.313 of 2006 on the file of the Junior Civil Judge, Hindupur, assailing the order passed by the said Court in I.A.No.541 of 2015.

2. Heard Sri N.Ranga Reddy, learned counsel, appearing for the petitioner and Sri P.Narahari Babu, learned counsel, appearing for the respondents, apart from perusing the material available before this Court.

3. The petitioner herein instituted the suit for permanent injunction against the respondents herein. In the said suit, the petitioner filed I.A.No.541 of 2015 under the provisions of Order 26 Rule 9 of the Code of Civil Procedure (herein after, 'the C.P.C.'), praying for appointment of Advocate Commissioner to note down the physical features in the petition schedule property.

4. Resisting the said application, the respondents 1 and 2 filed a counter. The learned Junior Civil Judge, Hindupur, by virtue of an order dated 08.02.2016, dismissed the said application. The said order passed by the learned Junior Civil Judge is under challenge in the present revision petition.

5. It is contended by the learned counsel for the petitioner that the order under challenge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 26 Rule 9 of the C.P.C.. It is the further submission of the learned counsel that had the averments in the affidavit filed in support of the application been considered from proper perspective, the order impugned in the present

revision would not have emanated. It is the further submission of the learned counsel that the Court below did not assign any valid reasons for dismissing the application filed by the petitioner.

6. On the contrary, it is contended by the learned counsel for the respondents that there is no illegality nor there exists any infirmity in the impugned order, as such, the order under challenge is not amenable for any interference of this Court under Article 227 of the Constitution of India. It is further submitted that since the Court below, while dismissing the application, assigned valid reasons, the said order does not require any correction by this Court.

7. In the above backdrop, now the issue that emerges for consideration of this Court is:

Whether the order under challenge is sustainable and tenable; and whether the same is in accordance with the provisions of Order 26 Rule 9 of the C.P.C.?

8. The information available before this Court manifestly discloses that in the affidavit filed in support of the present application, the petitioner (plaintiff) herein averred that the defendants 1 to 3 unlawfully got steps constructed in the open place and defendants 1 and 2 constructed steps to go up to the first floor in open place meant for the bore well, despite his objection. The said affidavit further averred that the 3rd defendant put up a show-case in the place meant for the bore and the defendants have no right to occupy any portion of the property for any purpose.

9. A perusal of the order under challenge shows that the learned Junior Civil Judge recorded a finding that the petitioner filed the application after lapse of nine years after filing of the suit and the learned judge further found that the petitioner filed the present application to fill up the lacuna and to drag on the proceedings.

10. During the course of hearing, learned counsel for the respondents has placed on record a copy of the plaint instituted by the petitioner and at Paragraph Nos.13 and 14 of the plaint, the petitioner herein stated that the defendants 1 to 3 unlawfully got steps constructed in the open space, shown as schedule "A" of the plaint and the 3rd defendant, recently, despite objections of the plaintiff, put up a show-case in the place meant for the bore and the defendants have no right to occupy any portion of the property meant for the bore for any purpose. In the affidavit filed in the present application also, the petitioner herein, while reiterating the same averments, stated that the defendants made the said constructions recently. Therefore, the finding of the Court below that 'the petitioner herein filed the present application after nine years and the petitioner herein failed to take any steps for all these years' cannot be faulted.

11. It is a settled and well established principal of law that unless the order impugned suffers from inherent lack of jurisdiction and fundamental infirmity, the jurisdiction of this Court cannot be permitted to be invoked under Article 227 of the Constitution of India.

12. For the aforesaid reasons, Civil Revision Petition is dismissed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

10.06.2016

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