

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 121 of 2011

ORDER:

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Assailing the order dated 25.08.2010 passed in I.A. No.650 of 2010 in O.S. No.231 of 2010 on the file of the Principal Junior Civil Judge, Tenali, wherein and whereunder an application filed under Order XXXIX Rules 1 and 2 and Section 151 C.P.C., filed for grant of temporary injunction was allowed, the present Civil Revision Petition is filed.

The respondent/plaintiff filed O.S. No.231 of 2010 seeking grant of permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of plaint schedule land i.e., Ac.4.00 cents of wet land belongs to Sri Chennakesava Swamy vari temple, Korutadiparru village, claiming leasehold rights over the plaint schedule property. Pending suit, the respondent/plaintiff filed I.A. No. 650 of 2010 under Order XXXIX Rules 1 and 2 and Section 151 of C.P.C., for grant of temporary injunction. The Court below allowed the I.A., by granting temporary injunction vide order dated 25.08.2010. Challenging the said order, the present Civil Revision Petition is filed.

The main contention of the Revision Petitioner/Defendant is that suit itself is not maintainable for non-joinder of necessary party i.e., Sri Chennakesava Swamy vari temple as the plaint schedule property belongs to Chennakesava Swamy vari temple and that the plaintiff ought to have approached the Endowment Tribunal instead of filing the suit. He further contended that when the main suit itself is not maintainable granting temporary injunction does not arise.

Per contra, the respondent contends that the suit is filed restraining the defendant from interfering with the peaceful possession and enjoyment as he was given possession of the temple lands on

lease and as such while subsisting the leasehold rights the defendant has no right to interfere in his peaceful possession and hence prayed for dismissal of C.R.P. He further submits that C.R.P. itself is not maintainable.

Admittedly, the C.R.P. is filed against an order passed under Order XXXIX Rules 1 and 2 and Section 151 of C.P.C., which is an appealable one as contemplated under Order XLIII Rule 1(r) of C.P.C. The issue of maintainability of the suit which has been raised by the revision petitioner was also raised in the counter filed by the respondent before the trial court seeking temporary injunction. Since an issue was raised by the petitioner/respondent therein the Court answered the same. But no specific application is filed by the petitioner herein before the trial court raising the said issue. However, the order came to be passed on an application filed under Order XXXIX Rules 1 and 2 of C.P.C., which is an appealable one, the objection if any can be raised in appeal itself. As the Revision is not maintainable under Article 227 of the Constitution of India, against the order passed under Order XXXIX Rules 1 and 2 C.P.C., I am not inclined to decide the case on merits leaving it open to the petitioner either to raise the objection with regard to maintainability of the suit by filing an appeal against the said order or file an independent application under Order VII Rule 11 C.P.C., for rejection of plaint, in which the same shall be dealt with in accordance with law.

With the above observation, the C.R.P. is dismissed. There shall be no order as to costs. Miscellaneous petitions pending if any in this C.R.P., shall stand dismissed.

C.PRAVEEN KUMAR,J

Dt:06.04.2016
GM

