

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.2892 of 2016

ORDER:

Heard Mr. K.V. Raghuveer for petitioner and Mr. K. Sita Ram for caveator/respondent.

2. The revision is directed against the order dated 20.01.2016 in CMA.No.15 of 2010.

3. Learned Judge disposed of the CMA by directing the parties as follows:

“14. POINT NO.2: In view of the findings of this Court on point No.1, the order under appeal certainly needs modification/interference of this Court and the order under appeal is liable to set aside. Hence, the point is answered accordingly.

15. In the result, the Civil Miscellaneous Appeal and the cross-objections are allowed setting aside the order and decretal order dated 23-03-2010 passed by the learned Principal Junior Civil Judge, Adoni, in I.A.No.123/2010 in O.S.No.21/2010, and the petition in I.A.No.123/2010 in O.S.No.21/2010 is allowed granting temporary injunction restraining the respondent/defendant and his men etc., from making any temporary or permanent construction by using Cement, Bricks, stones etc., and like that in the eastern side passage and more particularly at his eastern side door way and also any where in the passage and he is also restrained from interfering with the free use of the passage by the petitioner/plaintiff for his ingress and egress and more particularly to approach southern side road and vice-versa. The respondent/defendant is permitted to use the eastern side passage to enter his house through his eastern side door way and vice-versa by arranging/keeping easily moveable wooden steps/stairs in the passage and after entering the house and vice-versa, the respondent/defendant shall remove/take out that wooden steps/stairs and keep them in his house or some where and that arrangement shall not be interfered with by the

petitioner/plaintiff. Both the parties are directed to observe the directions given by this Court above, till the disposal of the suit and the above directions are subject to the result of the suit.”

4. Mr. K.V. Raghuveer for revision petitioner assailed the findings of the lower appellate Court on point No.2 and tried to point out the inherent contradictions in the directions issued by the lower appellate Court on point No.2. Learned counsel prayed for setting aside the directions issued in para 15 and direct the trial Court to dispose of the suit in definite timeframe.

5. Mr. K. Sita Ram submits that the directions issued by the lower appellate Court are well considered and take note of competing claims of parties and ensures preservation of the subject matter without permanent structures. Further, enjoyment, according to convenience, is not disturbed. Learned counsel is agreeable for expeditious disposal of the suit.

6. With the assistance of the learned counsel for parties, I have perused the findings recorded on point Nos.1 and 2, examined the same with the Commissioner's report dated 21.11.2015. I am of the view that the lower appellate Court having ordered appointment of Advocate Commissioner to note down physical features of subject matter of the litigation and keeping in mind the nature of disposal, at this stage of the matter, has stipulated workable conditions. I am not inclined to interfere with the arrangement directed by the lower appellate Court.

7. Keeping in mind, the request for expeditious disposal of the suit and the nature of dispute viz. about the common passage in existence between the houses of parties, I am satisfied that the trial Court can be directed to dispose of O.S.No.21 of 2010 within three (3) months from the date of receipt of a copy of this order.

The civil revision petition is dismissed with the above observation. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

There shall be no order as to costs.

July 1, 2016
DSK

S. V. BHATT, J