

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.3821 OF 2016

ORDER:

Heard.

The present writ petition is filed questioning the order of the 3rd respondent in rejecting the petitioners' application filed under Section 10 CPC for staying the proceedings in ROR Case No.D/8088/2015. The petitioners claim that the 4th respondent has already filed a suit in O.S.No.10 of 2009 for perpetual injunction, which was dismissed on 31-10-2013. Thereafter, the 4th respondent has filed a suit in O.S.No.79 of 2015 before the Junior Civil Judge, Gajwel, for declaration of title and recovery of possession. Hence, during pendency of the said suit, the application of the 4th respondent under Section 5(5) of the ROR Act, which is under enquiry before the 3rd respondent, is required to be stayed under Section 10 CPC. However, under the impugned order, dated 16-01-2016, the said application was dismissed and the main proceedings are posted for counter and arguments.

Learned counsel for the petitioners states that the proceedings ought to have been stayed by the 3rd respondent, as the suit for declaration is pending.

I am unable to appreciate the same as that issue is required to be adjudicated by the 3rd respondent in the main proceedings, which are pending before him. The petitioners state that they have already filed a counter raising this issue specifically in para '14' of their counter. As stated above, that is a matter for consideration before the 3rd respondent and I am unable to see how Section 10 CPC would

apply to the proceedings before the 3rd respondent. The analogy of Section 10 CPC cannot be applied, when a suit for declaration is pending on one hand and the proceedings under ROR are pending before the revenue authorities. Hence, I do not see any reason to entertain the writ petition. However, the petitioners are at liberty to raise their contention in the ROR Case pending before the 3rd respondent and it is for the 3rd respondent to adjudicate upon the merits or otherwise of the said claim.

Accordingly, the writ petition is disposed of. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

VILAS V.AFZULPURKAR, J

09.02.2016

Prv

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