

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Civil Revision Petition No.5086 of 2016

ORDER:

This revision petition is filed under article 227 of the Constitution of India, challenging the order dated 17.09.2016 passed in CMA No.15 of 2015 on the file of the Principal District Judge, Khammam, wherein and whereby, the learned District Judge dismissed the CMA by confirming the orders passed in IA No.486 of 2015 in OS No.168 of 2015, dated 10.06.2015 on the file of the Senior Civil Judge, Khammam.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed before this court.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

4. Learned counsel for the petitioner submitted that the learned Principal District Judge dismissed the CMA without taking into consideration the material available on record. He further submitted that the learned District Judge failed to consider the fact that the petitioner has been in possession and enjoyment of the schedule property.

5. Per contra, learned counsel for the respondent submitted that the learned Principal District Judge has considered various aspects in right prospective and dismissed the appeal. He further submitted that there are no grounds to interfere with the orders passed by the first appellate court.

6. A perusal of the record reveals that the respondent herein filed OS No.168 of 2015 on the file of the Senior Civil Judge, Khammam, for perpetual injunction against the petitioner herein. Along with the suit, he also filed IA No.486 of 2015 seeking *ad-interim* injunction. The trial court

granted *ex-parte* ad-interim injunction in favour of the respondent herein. Feeling aggrieved by the orders dated 10.06.2015 of the trial court, the petitioner herein filed CMA No.15 of 2015 on the file of the Principal District Judge, Khammam. Upon considering the material on record, the learned Principal District Judge, dismissed the CMA on 17.09.2016. Hence, the present revision.

7. A perusal of the record reveals that the petitioner and the respondent are own brothers. Both of them are claiming that they are the owners of the suit schedule property. The petitioner herein, in stead of filing the petition for vacating the interim order passed in IA No.486 of 2015, straightaway filed CMA No.15 of 2015. It is needless to state that the person who seeks *ad-interim* injunction has to establish the *prima-facie* case and balance of convenience are in his favour as on the date of filing of the suit. Further, he has to establish that if any interim injunction is granted in favour of the respondent, the same may cause irreparable loss to him. The trial court simply granted *ex-parte* interim injunction in favour of the petitioner on 10.06.2015 in IA No.486 of 2015, without any specific findings. The first appellate court also has not considered the scope of Order XXXIX Rule 1 C.P.C. In such circumstances, if this court expresses any opinion touching the merits of the case, the same may cause prejudice to one of the parties to the proceedings in view of pendency of IA No.486 of 2015. Further, if there is any illegality, irregularity or impropriety in the orders passed by the lower authority, this court can set aside the same by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

8. Having regard to the facts and circumstances, there are no grounds to interfere with the order of the court below. Hence, the civil

revision petition is dismissed. However, the trial court is directed to dispose of IA No.486 of 2015, on merits, within a period of one month from the date of receipt of a copy of this order, without being influenced by any of the observations made by this court or the first appellate court. No order as to costs. Miscellaneous petitions, if any pending in this revision petition, shall stand closed.

Date: 04.11.2016.
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T.SUNIL CHOWDARY, J



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