

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.2465 OF 2016

ORDER:

The Civil Revision Petition is directed against the order, dated 5.5.2016, in I.A.No.252 of 2016 in O.S.No.70 of 2016 on the file of the Junior Civil Judge, Prathipadu, East Godavari District whereunder and whereby, petition filed by respondent herein/plaintiff under Order XXXIX Rules 1 and 2 and Section 151 C.P.C. to grant temporary injunction restraining the petitioners herein/defendants, their men and hirelings in any way interfering with his peaceful possession and enjoyment of the petition schedule property pending disposal of the suit, was ordered by granting ad-interim injunction against the defendants from ever interfering with the peaceful possession and enjoyment of the plaintiff over the petition schedule property till further orders by complying Order XXXIX Rule 3 C.P.C. by the plaintiff, and also ordered to issue urgent notice to the defendants and posted the matter to 01.06.2016.

2. The respondent/plaintiff filed O.S.No.70 of 2016 on the file of the Additional Munsif Magistrate, Prathipadu against the petitioners/defendants for permanent injunction. Pending suit, the respondent filed I.A.No.252 of 2016 for temporary injunction. *Vide* order, dated 5.5.2016, this Court granted ad-interim injunction and ordered urgent notice to the petitioners herein and posted the matter to 01.06.2016. Challenging the same, the defendants filed the present Civil Revision Petition.

3. Learned counsel for the petitioners/defendants stated that the respondent herein played fraud and obtained injunction and hence, the same is liable to be set aside; that the respondent suppressed about the pendency of O.S.No.23 of 2007 on the file of the Senior Civil Judge, Peddapuram in respect of the same schedule where he is also one of the defendants; that the respondent is aware of the possessory agreement as well as the possession of the petitioners over the schedule property; that the petitioners have already filed a counter before the trial Court and hence, he prays to set aside the impugned order.

4. At the time of admission, this Court passed an elaborate order on 26.5.2016 and the relevant portion reads as under:

***“..... Having regard to the above factual matrix, there shall be interim suspension of the order dated 05.05.2016 in I.A.No.252 of 2016 in O.S.No.70 of 2016 on the file of the Court of Junior Civil Judge, Peddapuram, East Godavari District, for a period of 6 (six) weeks.*”**

Issue notice to the respondent.

Meanwhile, learned counsel for the petitioners is permitted to take out notice to the respondent by ‘RPAD’ and file proof thereof within four weeks to hear on continuation or not of this revision.

It is needless to observe that it is the duty of the petitioner to invoke remedy of appeal before the regular court, or to file application under Rule 4 of Order 39 of the Code of Civil Procedure, 1908 before the lower Court, if not, also to seek transfer of both the suits to the Court of Senior Civil Judge, Peddapuram, for joint trial.”

5. Considering all the facts and circumstances of the case and the submission of the learned counsel for the petitioners, this

Court is of the view that the Civil Revision Petition can be disposed of as under:

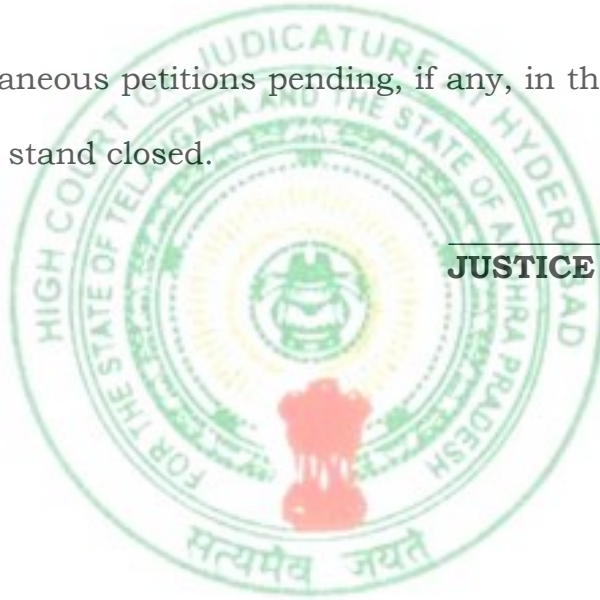
The trial Court is directed to dispose of I.A.No.252 of 2016 in O.S.No.70 of 2016 on the file of the Junior Civil Judge, Prathipadu, East Godavari District after hearing the petitioners herein. The impugned order of ad-interim injunction granted by the trial Court shall stand suspended till the disposal of I.A.No.252 of 2016.

6. Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs.

7. Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

7.9.2016
AMD

JUSTICE RAJA ELANGO



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Date: 7.9.2016

AMD