

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.5611 & 5620 of 2011

COMMON ORDER:

Since these two Revisions arise out of the same suit, they are being disposed of by this common order.

2. Heard counsel for the petitioners and the counsel for respondents.

3. The respondents/plaintiffs filed a suit O.S.No.338 of 2008 on the file of Principal Junior Civil Judge, Visakhapatnam for perpetual injunction restraining the petitioners/defendants from interfering with the construction and her peaceful possession and enjoyment of the plaint schedule property. They contended that under an agreement of sale dt.15.03.1992 they were in possession of the property and that when they tried to repair/construct the structure in the property, which was damaged due to heavy rain fall, the petitioners objected.

4. The respondents also filed I.A.No.793 of 2008 seeking temporary injunction pending suit against the petitioners.

5 Only the 4th respondent filed a counter affidavit opposing grant of temporary injunction.

6. By order dt.25.07.2008 the trial Court granted temporary injunction pending disposal of the suit by allowing I.A.No.793 of 2008.

7. The said order was questioned by the defendants 1 to 3 and 6/petitioners in CRP.No.5611 of 2011 in CMA No.45 of

2010 and the defendants 4 and 5/petitioners in CRP.No.5620 of 2011 in CMA No.43 of 2010.

8. By separate orders dt.23.07.2011, the lower appellate Court dismissed both the CMAs. It held that no counter had been filed by the petitioners/defendants 4 and 5 in I.A.No.793 of 2008 and they were set ex-parte in the suit itself. Thereafter, during the course of enquiry in the injunction application, there was an admission by the petitioners about the respondents being in possession of the property. Therefore, the lower appellate Court held that the CMAs were filed only to drag on the proceedings and the petitioners have not given any reason for not advancing the arguments on the date when the injunction application was posted for arguments. It referred to the plea of the petitioners that possession was handed over subsequent to the disposal of a temporary injunction petition in a suit O.S.No.930 of 2005 filed by the petitioners, and held that instead of getting that aspect clarified, the petitioners avoided advancing arguments in the injunction application.

9. From the facts narrated above, admittedly it is clear that there is an interim injunction in favour of the respondents/plaintiffs from 25.07.2008 and the said injunction was not suspended pending CMA Nos.45 and 43 of 2010 filed by the petitioners. There has also been no suspension of the injunction in these Revisions after the CMAs were dismissed.

10. Therefore, at this point of time, I am not inclined to interfere with the orders passed by the lower appellate Court in

confirming the orders passed by the trial Court in I.A.No.793 of 2008 granting temporary injunction to the respondents.

11. Therefore, the CRPs are dismissed. However, the trial Court is directed to decide the main suit itself if not already disposed of within a period of six (06) months from the date of receipt of a copy of this order uninfluenced by any findings given in its order dt.25.07.2008 in I.A.No.783 of 2008 or in the orders dt.23.07.2012 in CMA Nos.43 and 45 of 2011 by the lower appellate Court or any observations made in this order. There shall be no order as to costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand closed.

18th November, 2016.
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M.S.RAMACHANDRA RAO, J

