

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1251 of 2012

ORDER:

_____ This criminal revision case is filed under Sections 397 and 401 Cr.PC challenging the order dated 07.7.2012 in M.C. No.42 of 2012 on the file of the Tahsildar and Mandal Executive Magistrate, Sirvel, Kurnool District.

2. The contention of learned counsel for the petitioner is two fold: (1) the first respondent i.e., the Tahsildar and Mandal Executive Magistrate, Sirvel, Kurnool District ought not to have passed the impugned order without issuing notice to the petitioner; and (2) the order passed by the first respondent is not sustainable in view of pendency of O.S. No.91 of 2011 on the file of the Court of Senior Civil Judge, Allagadda in respect of self-same schedule property. ***Per contra***, learned Public Prosecutor submitted that the first respondent might have passed the orders without knowledge of the pendency of the suit.

3. As per the orders of the first respondent, there is a boundary dispute in survey No.481-A of Boilakuntla village, Sirvel Mandal. A perusal of the record clearly reveals that the first respondent passed the orders without giving any opportunity to the petitioner. The record further reveals that the petitioner filed O.S. No.91 of 2011 on the file of the Court of Senior Civil Judge, Allagadda in respect of an extent of Acs.3.00 in survey No.481/A and an extent of Acs.1.43 cents in survey No.482/A of Boilakuntla village against defendant No.1 to 5 therein seeking perpetual injunction. The petitioner also filed I.A. No.685 of 2011 in O.S. No.91 of 2011 seeking ad interim injunction and the same was granted on 06.1.2012 whereas the impugned order was passed by the first respondent on 07.7.2012. 'B' party in the M.C. is defendant No.3 in the suit. The fact remains that civil court granted interim injunction in favour of the petitioner. It appears that the first respondent

passed the orders without knowing the pendency of the suit. Section 145(1) Cr.P.C mandates issuance of notice to the affected party before passing any orders. Admittedly, in the instant case, no notice was issued to the petitioner before passing the impugned order. Moreover, civil suit is pending between the petitioner and "B" party. If the order is allowed to continue, certainly it would amount to violation of principles of natural justice. Any order passed in violation of principles of natural justice or the provisions of Cr.P.C., is non-est in the eye of law.

4. Having regard to the facts and circumstances of the case, I am of the considered view that the order passed by the first respondent is liable to be set aside.

5. Accordingly, the criminal revision case is allowed, setting aside the order dated 07.7.2012 in M.C. No.42 of 2012 on the file of the Tahsildar and Mandal Executive Magistrate, Sirvel, Kurnool District. However, allowing of this revision case does not preclude the first respondent to pass appropriate order after affording reasonable opportunity to the petitioner. Miscellaneous petitions if any pending in this CrI.RC shall stand closed.

T.SUNIL CHOWDARY, J

June 21, 2016.

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