

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT APPEAL No. 1066 OF 2016

JUDGMENT *(Per the Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)*

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.No.30736 of 2016, dated 14.10.2016, whereby respondents 1 to 6 were directed to provide police protection to implement the order passed by the II Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, in C.M.A.No.66 of 2012 dated 24.09.2012, which was confirmed by this Court in C.R.P.No.517 of 2013 dated 27.08.2016, and respondents 7 to 10 (including the appellants herein) were directed to pay costs of Rs.10,000/- to the respondent – writ petitioners within four weeks.

Facts, to the limited extent necessary, are that the respondent – writ petitioners filed O.S.No.1402 of 2010 before the Principal Senior Civil Judge, Ranga Reddy District seeking injunction. I.A.No.1406 of 2010 in O.S.No.1402 of 2010, for grant of temporary injunction, was dismissed by the learned Principal Senior Civil Judge on 28.03.2012. Aggrieved thereby, the respondent – writ petitioners filed C.M.A.No.66 of 2012 before the II Additional District and Sessions Judge, Ranga Reddy District who, by his order dated 24.09.2012, granted interim injunction. Aggrieved thereby, the appellants herein filed C.R.P.No.517 of 2013 before this Court which was dismissed on 27.08.2016. S.L.P.No.29455 of 2016, preferred by them thereagainst, was dismissed by the Supreme Court on 17.10.2016. As a result thereof, the order passed by the II Additional District and Sessions

Judge, Ranga Reddy District, in C.M.A.No.66 of 2012 dated 24.09.2012, has attained finality.

The respondent – writ petitioners filed representations on 31.08.2016 and 08.09.2016 seeking police protection. In the said representations, they contended that the appellants herein had dug a bore well on 25.05.2016, and had constructed a compound wall on 29.05.2016, in violation of the injunction order. Thereafter the respondent – writ petitioners filed the present writ petition and, by the order under appeal dated 14.10.2016, the learned Single Judge granted them the relief sought for. Aggrieved thereby, the appellants herein have invoked our jurisdiction under Clause 15 of the Letters Patent.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellants, would submit that the learned Single Judge had erred in directing police aid to be extended to the respondent - writ petitioners, after having recorded a finding that the appellants herein had trespassed into the said land; while the appellants have always claimed to have retained physical possession over the subject land, even if the contention of the respondent – writ petitioners, that the appellants had trespassed into the subject land, has any basis, their remedy is only to seek restitution under Section 144 of the Code of Civil Procedure (for short 'CPC'); the learned Single Judge ought not to have granted the relief of providing police aid in respect of the subject property which is, admittedly, in the possession of the appellants; taking advantage of the order of the learned Single Judge, the respondent – writ petitioners had forcibly entered into the subject land on 23.10.2016, and had demolished the

compound wall, the bore well and the building constructed thereupon, within a span of just a couple of hours; and they had also removed the sign boards placed by the appellants on the subject land.

The order of temporary injunction, granted in C.M.A.No.66 of 2012 dated 24.09.2012 by the Learned II Additional District and Sessions Judge, Ranga Reddy District, (which order has been confirmed by this Court in C.R.P.No.517 of 2013 dated 27.08.2016 and the Supreme Court in S.L.P.No.29455 of 2016 dated 17.10.2016), would require this Court, in collateral proceedings, to presume that the respondent – writ petitioners were in possession of the subject land on 28.03.2012. We cannot, therefore, accept the submission of Sri Vendula Venkataramana, learned Senior Counsel, that the appellants were in actual physical possession of the subject property.

As the order passed in C.M.A.No.66 of 2012 dated 24.09.2012 would require us to proceed on the basis that the respondent – writ petitioners were in possession of the subject land as on that date, the appellant herein must necessarily be held to have trespassed into the subject land. While such trespass by the appellants may enable the respondent – writ petitioners to seek restitution under Section 144 CPC, it must be borne in mind that the jurisdiction, which this Court exercises under Article 226 of the Constitution, is discretionary. The learned Single Judge has, after having held that the appellants herein had trespassed into the subject land, exercised discretion to grant police aid to the respondent – writ petitioners. If, as is now contended before us, a compound wall was raised and a bore well was dug in the subject

land violating the order of temporary injunction granted by the Learned II Additional District and Sessions Judge, Ranga Reddy District, in C.M.A. No.66 of 2012 dated 24.09.2012, the appellants cannot be heard to contend that, notwithstanding the fact that they had violated the order in C.M.A. No.66 of 2012, and, trespassed into the subject land, this Court should have refrained from interference, and must have merely relegated the respondent - writ petitioners to the remedy of restitution under Section 144 CPC. It is only if the order under appeal suffers from a patent illegality would this Court exercise jurisdiction, in an intra-court appeal under Clause 15 of the Letters Patent, to interfere. We find no such infirmity in the order passed by the learned Single Judge.

With regards the contention, urged on behalf of the appellants that the structures of the subject land were demolished on 23.10.2016, it must be borne in mind that these events are all subsequent to the order under appeal passed by the learned Single Judge on 14.10.2016. Suffice it, therefore, to make it clear that this order shall not preclude the appellants herein from availing such remedies as are available to them in law, against the alleged action of the respondent – writ petitioners, which they claim is in violation of the order passed by the learned Single Judge. We, however, see no reason to interfere with the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

Date: 24.10.2016

va

A.SHANKAR NARAYANA, J