

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.2313 of 2016

ORDER:

Vide the present petition, petitioners seek direction for granting stay of all further proceedings including trial in O.S.No.122 of 2012 on the file of Junior Civil Judge, Piduguralla, pending disposal.

Learned counsel appearing on behalf of the petitioners submitted that the 1st respondent herein has filed O.S.No.122 of 2012 against the petitioners for grant of permanent and mandatory injunctions (a) restraining the defendants and their men from ever causing any obstruction to the peaceful possession and enjoyment of plaintiff over the ABCDEFGH portion, (b) directing the defendants from closing the doorways opened towards site of the plaintiff and (c) directing the defendants to construct the CDEFG wall and arrange the gate in between BC.

The case of the petitioners before the Court below is that in the registered sale deed dated 31.07.1950 under Document No.1480 of 1950 the eastern boundary is shown as 'BALI BAZAR', which shows that there is a Bali Bazar and the members of the vicinity has given a representation to the Commissioner of Piduguralla Municipality. Accordingly, the petitioners moved I.A.No.15 of 2016 to implead the Commissioner, Piduguralla Municipality, Piduguralla as one of the defendants. The same was dismissed vide order dated 30.03.2016 without considering the fact that the Commissioner of Piduguralla Municipality has instructed the officials i.e., Town Planning Officer to make a local enquiry and also to collect the title deeds pertaining to the house owners of the vicinity and after getting the documents and

on enquiry, the matter was referred to the Legal Opinion. Accordingly, on receipt of the legal opinion, higher officials of the said Municipality came to the conclusion that as per procedure contemplated in A.P. Municipalities Act, the Commissioner issued notice to respondent No.1/plaintiff on 22.11.2012 vide proceedings in ROC No.720/201/G1 for removal of the encroachment and Smt Annam Parvathamma i.e. plaintiff in O.S.No.120 of 2012. The said Parvathamma requested time of two days for removal of the encroachments on 06.12.2012 and she gave undertaking to pay an amount of Rs.2,00,000/- in case she did not remove the encroachment. As per her request, the respondent No.1/plaintiff voluntarily removed the encroachments made in Bali Bazar. Thus, it shows that the 1st respondent/plaintiff had encroached the land of the municipality. However, learned Judge has opined that at best the said proposed party can be a witness to the alleged version of petitioners/defendants, he cannot be neither necessary nor proper party to the suit.

Learned counsel appearing for the petitioners submit that the petitioners may made proposed respondent as witness, but only apprehension is that the said proposed respondent may not bring on record before the Court, who is necessary to adjudicate the suit.

Keeping in view the facts recorded above and perusal of order dated 30.03.2016, I find no discrepancy in the order passed by the Junior Civil Judge, Piduguralla. However, I deem it appropriate that in case the petitioners witness the Town Planning Officer, the Court shall ensure that the said officer shall produce the record relevant to the suit property at the time of his statement in the Court.

In view of the above, the petition is disposed of. There shall be no order as to costs.

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

SURESH KUMAR KAIT,J

Date: 07.06.2015

Note: issue c.c. by two days.

b/o

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