

**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

CRP No.2781 of 2011

Oral Order :

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 29.4.2011 passed in I.A.No.736 of 2010 in O.S.No.560 of 2009 by the Court of the XI Junior Civil Judge, City Civil Court, Secunderabad.

Heard Mr.Mohd. Imrankhan, learned counsel for the petitioner and Sri T. Ramulu, learned counsel for the respondents.

The petitioner herein instituted suit, O.S.No.560 of 2009, on the file of the Court of the XI Junior Civil Judge, City Civil Court, Secunderabad against the 1<sup>st</sup> respondent-defendant for perpetual and mandatory injunction in respect of the suit schedule property. Resisting the said suit, the 1<sup>st</sup> respondent-defendant filed written statement. After filing of the written statement, plaintiff, revision petitioner herein, filed the present I.A.No.736 of 2010 under the provisions of Order 1 Rule 10 of the Code of Civil Procedure, seeking impleadment of the 2<sup>nd</sup> respondent herein as the defendant no.2 in the suit. The learned Judge dismissed the said I.A. by way of order dated

29.4.2011. Calling in question the validity and legal sustainability of the said order passed by the learned Judge, the present Civil Revision Petition has been filed by the plaintiff-revision petitioner.

It is vehemently contended by the learned counsel for the petitioner that the impugned order is erroneous and contrary to law and is opposed to the very object and spirit of the provisions of the Order 1 Rule 10 CPC; that the learned Judge grossly erred in not assigning any reasons for arriving at the conclusions in the impugned order and the same is non-speaking order; and that the impugned order would not have emanated had the contents of the affidavit filed in support of the application been considered from proper perspective.

On the contrary, it is vehemently contended by the learned counsel for the respondents that there is no material infirmity in the impugned order as such the impugned order is not amenable for any judicial review under Article 227 of the Constitution of India.

The very basis for filing the present application is the averments made in the written statement filed by the 1<sup>st</sup> respondent-defendant. Paragraph "4" of the written statement filed by the 1<sup>st</sup> respondent-defendant reads as under :

“ To answer to the contents of paragraph No.4 of the

plaint these defendants submits that it is true that they have purchased plot no.49 from the owner by name Dastagiri son of Fakruddin bearing sale deed No.2181. But as stated by the petitioner the said plot is not in the name of the defendant but it is in the name of the defendant but the registered sale deed to show the proof of the same which bears the name of Dr.Neeraja.”

A perusal of the impugned order discloses that the learned Judge dismissed the application on the ground that there is confusion in the said paragraph of the written statement. The other ground assigned by the learned Judge is failure on the part of the petitioner in taking steps to implead the Cantonment Board. In the considered opinion of this Court, the said reasons cannot be the basis for dismissal of the present application. The learned Judge ought to have considered the averments filed in support of the application and the pleadings in the written statement of the 1<sup>st</sup> respondent-defendant from proper perspective and ought to have recorded the findings as to whether proposed impleadment of the respondent no.2 is proper and necessary or not. Having regard to the above circumstances, this Court is inclined to set aside the impugned order for reconsideration of the matter afresh by the Court below.

For the aforesaid reasons, the impugned order dated 29.4.2011 passed in I.A.No.736 of 2010 in

O.S.No.560 of 2009 by the Court below is set aside and I.A.No.736 of 2010 stands restored to the file of the Court below for its disposal in accordance with law, after giving notice and opportunity of hearing to all the stake holders.

Subject to above directions, the Civil Revision Petition is allowed. Miscellaneous petitions pending, if any, shall stand closed. No costs.

JUSTICE

A.V.SESHA SAI

Dt: 25-2-2016

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