

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5699 of 2011

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the order dated 15.12.2011 of the learned VI Junior Civil Judge, City Civil Court, Hyderabad passed in IA.No.777 of 2011 in OS.No.1728 of 2011 filed by the petitioner/plaintiff under Section 151 of the Code of Civil Procedure seeking to suspend/stay the operation of Lr.No.17/ACP/C5/SZ/GHMC/2011 dated 13.07.2011 till the disposal of the main suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for short). I have perused the material record including the order impugned.

3. None appeared for the 2nd respondent though the said respondent was served with notice. No relief is claimed against the respondents 1, 3 to 5 *vide* cause title.

4. In the suit that was brought against the GHMC and others, the plaintiff had sought a declaration that the notice dated 13.07.2011 in Lr.No. 17/ACP/C5/SZ/GHMC/2011 as null and void and not binding on the plaintiff and other consequential reliefs. The case of the plaintiff is that the notice that was assailed in the suit makes a mention of a shop at premises no.21-1-80 whereas the shop of the plaintiff is in premises no.21-1-84/5 beside Moti Masjid Dilli Darwaza, Nayapul, Hyderabad; and that there is a dispute about the identity of the property; and that admittedly the petitioner is in possession of the property; and that as the application for temporary injunction not to interfere with the possession was earlier dismissed by the trial Court, the respondents are now coming to the property and are trying to forcefully remove the shop of the petitioner to facilitate construction of refreshment

rooms (public toilets) by the 4th respondent under BOT scheme; and that since the very notice is challenged in the suit and the identity of the property is also disputed, the plaintiff is entitled to continue in possession of the property at-least till the final disposal of the suit; and that unless the notice impugned in the suit is suspended, the *status quo* in regard to his possession cannot be maintained as a threat of forceful dispossession is looming large; and that therefore, the petitioner is constrained to file IA.No.777 of 2011 before the trial court seeking suspension; but, the trial Court by the order impugned had erroneously dismissed the said application by *inter alia* observing that even according to the plaintiff there is a dispute about the identity of the property and that the notice impugned was issued pursuant to the orders of this Court in a writ petition and that, therefore, the trial Court cannot suspend the notice, which was issued pursuant to the orders of this Court. The learned counsel would further submit that if the notice is suspended, the *status quo* in regard to possession of the plaintiff over his shop property would be maintained till the disposal of the suit; and that such a course would sub-serve the ends of justice; and that if such suspension pending disposal of the suit as prayed for is not granted and the plaintiff is forcefully dispossessed from the property in his occupation, without establishing the identity of the properties, the relief sought in the suit would become infructuous; and that the livelihood of the plaintiff would be affected; and that the plaintiff would be put to irreparable loss; and that, therefore, it is, in the interests of justice, to allow the revision and grant the relief by setting aside the orders of the Court below.

5. Having bestowed my attention to the facts and the submissions and on an analysis of the narration supra, this Court is satisfied that if no order of suspension of the impugned proceeding/letter, as prayed for, is granted at least till the disposal of the suit, as rightly contended, the suit becomes infructuous in case of forceful eviction of the plaintiff from the property and it may not be possible to adequately compensate the injury/loss that may ensue to the plaintiff, if he eventually succeeds in the suit. Hence, this Court finds acceptable merit in the contentions of the revision petitioner. Viewed

thus, this Court finds that the order impugned brooks interference.

6. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.No.777 of 2011 in OS.No.1728 of 2011 is allowed granting suspension of the operation of Lr.No.17/ACP/C5/SZ/GHMC/ 2011 dated 13.07.2011 till the disposal of the main suit subject to the condition that the plaintiff shall co-operate for expeditious disposal of the suit and the further condition that the trial Court shall make an endeavour to dispose of the suit as expeditiously as possible and preferably within a period of two (02) months from the date of the receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:19.02.2016

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