

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.56 OF 2012

ORDER:

The Civil Revision Petition is filed impugning the order dated 26.11.2011 passed in I.A. No.91 of 2011 in O.S. No.141 of 2009 on the file of Junior Civil Judge—cum—V Metropolitan Magistrate, Medchal, Ranga Reddy District.

2) Heard both sides and perused the material on record.

3) The brief averments of the case are that the revision petitioner is the sole defendant in O.S. No.141 of 2009. The respondents herein are the plaintiffs, who filed the suit for permanent prohibitory injunction against the sole defendant referred supra. There is another suit in O.S. No.173 of 2009 subsequent to the suit in O.S. No.141 of 2009 before the self same Court, maintained by Smt.Sarojini Devi as sole plaintiff arraying the plaintiffs in O.S. No.141 of 2009 as defendants 1 to 3 therein and that suit is also for permanent prohibitory injunction in respect of the self same property. As it appears including from reading of the impugned order passed in I.A. No.91 of 2011 and also from the submissions which are not in dispute that orders were passed from the interim injunction orders passed in both the suits by posting for final hearing and directing both parties of both suits to maintain existing status-quo vide orders passed in I.A. No.526 of 2009 in O.S. No.141 of 2009 and I.A. No.887 of 2009 in O.S. No.173 of 2009.

4) The defendants in O.S. No.141 of 2009 filed I.A. No.91 of 2011 against M/s.Aruna Agro Estates Private Limited, who is not party to the suit in O.S. No.173 of 2009 for appointment of advocate commissioner for local inspection including to note down the physical features of the plaint schedule property saying it violated the status-

quo orders granted in both the suits as there were changes in the physical features etc, thus, noting down of physical features is necessary including initiating proceedings for violation of the status-quo orders to be taken.

5) The sole defendant in O.S. No.141 of 2009, who is not party to O.S. No.173 of 2009, opposed the appointment of Commissioner saying in his written statement that he is never in possession of suit property or any portion thereof and he is totally stranger and is unnecessarily impleaded.

6) The appointment of Commissioner for local inspection to note down the physical features as sought in I.A. No.91 of 2011 was allowed by the trial Court vide order dated 26.11.2011. Not only that, there is also another I.A. No.92 of 2011 in O.S. No.141 of 2009 filed by plaintiffs seeking the trial Court to club the suit with O.S. No.173 of 2009 for joint trial and on the very same day i.e., on 26.11.2011, I.A. No.92 of 2011 was also allowed.

7) It is necessary to mention that by virtue of clubbing of both suits pursuant to the even date order passed in I.A. No.92 of 2011, the plaintiffs in O.S. No.173 of 2009 are also required to be served with notice in the petition for Commissioner appointment for hearing and to participate so far as noting of the physical features concerned as they are also, if at all, responsible to submit about any alleged violation of injunction as the very contention of the petitioner in I.A. No.91 of 2011 to seek appointment of Commissioner to note down the physical features is to use for the violation of status-quo order by proceeding under Order XXXIX Rule 2-A C.P.C.

8) Having regard to the above, revision petition is allowed setting aside the impugned order passed in I.A. No.91 of 2011 in O.S. No.141 of 2009 on the file of Junior Civil Judge, Ranga Reddy District at Medchal and remanding the matter to the lower Court, directing the

petitioners to issue notice to the plaintiff in O.S. No.173 of 2009 also since by virtue of clubbing of both suits, they are also practically co-plaintiffs in O.S. No.173 of 2009 and co-defendants to the suit in O.S. No.141 of 2009 and the sole defendant in O.S. No.141 of 2009 is also practically co-defendant in O.S. No.173 of 2009 and to dispose of the application after hearing with counter, if any, afresh for such local inspection and for noting down the physical features in their presence.
No order as to costs.

9) As a sequel, miscellaneous petitions if any pending in this Civil Revision Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.28.07.2016
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