

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.24 of
2016

JUDGMENT:

This appeal is preferred against order dated 14.12.2015 in I.A.No.1314 of 2015 in A.S.No.71 of 2015 on the file of IX Additional District Judge, West Godavari at Kovvur.

2. First respondent herein filed O.S.No.69 of 2012 for permanent injunction restraining defendants-appellant and respondent Nos.6 and 7 herein from interfering with peaceful possession and enjoyment of the plaint schedule property, particularly by laying power tower in any part of the plaint schedule property and during pendency of suit, plaintiff died and his legal representatives are brought on record as plaintiff Nos.2 to 5, who are respondent Nos.2 to 5 herein. Trial Court on a consideration of evidence dismissed the suit by judgment dated 06.11.2015. Questioning the same, plaintiffs-respondent Nos.2 to 5 herein preferred A.S.No.71 of 2015 and in that appeal I.A.No.1314 of 2015 is filed seeking temporary injunction pending disposal of the appeal. Learned IX Additional District Judge, West Godavari at Eluru, on a consideration of the material on record granted temporary injunction against appellant

and respondent Nos.6 and 7 herein restraining them from interfering in any manner, particularly by way of erection of tower and stringing of wires in the plaint schedule property till disposal of the appeal. Question the said order, present appeal is preferred.

3. This Court on 18.01.2016, considering the representation of appellant that 94% of the work of laying electric lines and erection of towers is completed over 60 kms. and towers have to be laid in a length of 100 meters, granted interim suspension of the injunction order.

4. Respondent Nos.2 to 5 i.e., plaintiffs in spite of service of notice neither appeared in person nor through any advocate.

5. Heard arguments of learned counsel for appellant.

6. It is submitted that the remaining work is also completed and all the towers were laid and in fact plaintiffs also gave consent as they received compensation for the loss sustained by them and plaintiffs are in the process of withdrawing the main appeal itself.

7. I have perused the material papers including the impugned order dated 14.12.2015. The main suit itself is for permanent injunction restraining defendants from erecting towers and laying

electric lines across the land of plaintiffs, which is the plaint schedule property and the trial Court after considering the evidence of both parties i.e., both oral and documentary, held that plaintiffs are not entitled for the relief of permanent injunction and at best they can only claim compensation under Section 10(d) of the Indian Telegraph Act and Section 16 of the Electricity Act, but the first appellate Court without looking into those aspects carried away with the submissions of plaintiffs and granted temporary injunction pending disposal of the appeal. When plaintiffs were held not entitled for the injunction on merits, granting temporary injunction in an appeal is unwarranted, and without there being any fresh prima facie material, the first appellate Court granted temporary injunction. Further, when plaintiffs have already received compensation for the loss sustained by them and contemplating to withdraw the appeal itself, there is no point in continuing temporary injunction pending disposal of the appeal.

8. For these reasons, the impugned order dated 14.12.2015 is set aside and appeal is allowed.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

19th April 2016.

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S. RAVI KUMAR, J