

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.356 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioners herein/ respondents/defendants aggrieved by the order dt:04.01.2016 in I.A.No.252 of 2015 in I.A.No.137 of 2015 in O.S.No.28 of 2015 on the file of Junior Civil Judge, Kotabommali, Srikakulam District, whereunder the learned Judge allowed the I.A.No.252 of 2015 filed by the respondents herein/plaintiffs and directed the petitioners/respondents/defendants to remove the wall constructed across the suit schedule property i.e, plain plan mentioned ABCD marked portion within 15 days from the date of the order and restore the suit schedule property to its original position, failing which plaintiff was at liberty to get execute the above order through Court of law.

2a) The respondent/plaintiff filed O.S.No.28 of 2015 against petitioners for permanent injunction restraining them from ever interfering with plaintiff's peaceful ingress and aggress into the plaintiff's educational institution through plain plan mentioned ABCD marked vacant passage. Briefly stating, the plaintiff's case is that he has been running educational institutions under the name and style of Kottammathalli Educational Society in plain plan mentioned EFGH site having purchased the same along with one Hanumanthu Garikaiah and later obtained relinquishment deed from his co-owner and constructed building thereon. The plain plan mentioned ABCD passage which is to the north of EFGH serves as the only source of ingress and aggress to one and all to reach the educational institutions in EFGH. The plaintiff's case is that he purchased the properties lying on Eastern and Western side of ABCD from their respective owners i.e, to say, Eastern side

property from Smt. Korada Ramanamma under registered sale deed dt:21.10.1988 and Western side property from Korada Nagabushana Rao and his two sons Korada Sarath Kumar and Satish Kumar under registered sale deed dt:15.10.1988 and the vendors of the two sale deeds who have a joint right in the ABCD rasta have conferred the right of passage on their vendor i.e, plaintiff. Thus ABCD serves ingress and egress to the teachers, students, staff and vehicles and it is the only way for them. While-so, defendants 1 to 9 who belong to one family and politically influenced persons demanded the plaintiff to sell his other property which is situated by the side of defendants 1 to 4's property and plaintiff refused and hence, they bore grudge against him and threatened to obstruct the plaintiff and his men for using the passage which is common for plaintiff, his vendors and the defendants. Hence, the plaintiff filed the suit for permanent injunction.

b) The petitioners/defendants filed written statement and admitted that the plaintiff is the owner of EFGH Educational Society. They also admitted that the plaintiff and Hanumanthu Garikaiah purchased the site lying on either side of the plan ABCD passages. However, their contention is that Smt. Korada Ramanamma, the vendor under the sale deed dt:28.10.1988 has no right on the ABCD joint passage and so she cannot confer any right of easement in favour of plaintiff. According to them, (1)Korada Krishna Murthy, the father of defendants 1 and 2, (2) Korada Jagannadham (3) Korada Laxmana Murthy (4) Korada Narasimha Murthy (5) Korada Nagabushana Rao and (6) Korada Malleshwara Rao have the joint right over the ABCD passage and Korada Nagabushana Rao, the vendor of the plaintiff under registered sale deed dt:15.10.1988 has only 1/6th common right in the ABCD passage i.e, 3" x 260' (out of 18' x 260') but not 9'-00" x 260'-00" as stated in the registered sale deed. Further, the right of passage

created by Nagabushana Rao was limited to the plaintiff and his co-purchaser Garikaiah and they cannot sell the said easementary right to others. Their further case is that in the 1998-99 there used to be a small Convent School opened by the plaintiff and the school children used to go through the private joint passage by using 3'-00" width which was equivalent to 1/6th share of Korada Nagabushana Rao. Even from that time, the defendants who are the other joint owners made objections to the plaintiff not to use the remaining portion of the passage but the plaintiff used to represent that he would find out another way or purchase easementary right from the other rightful owners and proceed with the construction from the year 2005. However, he postponed the same on one pretext or other. So all the rightful owners jointly constructed a wall by leaving 3'-00" width across the said joint private passage in the year 2007 itself and therefore, the suit is not maintainable. The defendants also challenged the suit on various other grounds which are not germane for the present C.R.P.

3) While-so pending suit, the respondent/plaintiff filed I.A.No.137 of 2015 seeking interim injunction and initially the Court granted a *status quo*. The plaintiff's case is that pending *status quo* order dt:27.08.2015, the defendants highhandedly and unauthorisedly constructed a small wall of about 3'-00" height across the ABCD passage in East West direction in three days i.e, from 16.09.2015 to 18.09.2015. Though plaintiff questioned their illegal acts but they continued their construction forcibly and highhandedly. So the plaintiff filed I.A.No.252 of 2015 under Sec.151 CPC praying the Court to pass an order for removal of the said unauthorisedly constructed wall by the respondents/ defendants 1 to 9. The respondents filed counter and opposed the petition contending that they never violated the *status quo* order and on the other hand the wall was constructed long prior to the

filing of the suit.

4) It appears, the trial Court conducted enquiry in I.A.No.137 of 2015 as well as in I.A.No.252 of 2015. In its order dt: 04.01.2016 in I.A.No.137 of 2015, the trial Court granted temporary injunction in favour of petitioner/plaintiff. Whereas in its order dt: 04.01.2016 in I.A.No.252 of 2015, the trial Court basing on the documentary evidence especially the photographs filed by both parties observed that the defendants have constructed the wall subsequent to the filing of the suit to obstruct the ingress and egress of the plaintiff and his men over the ABCD marked passage and accordingly directed the respondents/defendants to remove the wall in plaint plan ABCD passage within 15 days.

Hence, the instant CRP by the respondents/defendants.

5) Heard arguments of Smt.P.Rajeswari, learned counsel for petitioners and Sri Aravala Rama Rao, learned counsel for respondent.

6 a) Severely fulminating the order of the trial Court, learned counsel for petitioners firstly argued that even if the case of respondent/plaintiff is held to be true, one of their vendor Smt. Korada Ramanamma have had no right in the ABCD passage and so she cannot confer any easementary right to her vendor i.e, plaintiff and Hanumanthu Garikaiah. Whereas the other vendor Late Korada Nagabushana Rao is concerned, he had only 1/6th joint share in the ABCD passage which is roughly equivalent to 3" x 260" out of 18"x 260" but not 9" x 260" as mentioned in the sale deed and so the plaintiff has not come to the court with clean hands. Further, the conferment of easementary right by Nagabushana Rao was limited to plaintiff and his co-purchaser Hanumanthu Garikaiah only and they have no right to create easementary right in favour of third parties. However, contrary to it,

the plaintiff who is now laying plots in 5 acres of land purchased by him towards Southern side of the EFGH educational institutions, trying to give passage to the purchasers of those plots through ABCD which is against the terms of the registered sale deed executed by Nagabushana Rao. The plaintiff suppressed the said fact and filed the suit and hence the suit itself is not maintainable and consequently the plaintiff is not entitled to mandatory injunction.

b) Nextly, learned counsel further argued that the wall has been in existence since 2007 and it was not constructed after filing of the suit and the trial Court erred in coming to such conclusion. He further submitted that while constructing the wall 3'-00" width of vacant space was left on either side of the wall for ingress and egress of the plaintiff and others to reach the Educational Institutions and the said width of the passage left over being equivalent to the share of Nagabushana Rao, the plaintiff cannot express any grievance for construction or existence of the wall in the remaining portion. Hence, the plaintiff has no cause of action for the suit and the instant petition.

He thus prayed to allow the CRP.

7) Per contra, learned counsel for respondent/plaintiff argued that even as per the admission of the petitioners/defendants, the plaintiff's vendor Nagabushana Rao had a joint right in the ABCD passage which he conferred on the plaintiff under registered sale deed dt:15.10.1988 and therefore, the plaintiff and his co-purchaser who stepped into the shoes of Nagabushana Rao have every right to use the ABCD common passage along with the defendants and while exercising their right, the plaintiff as well as the other co-owners i.e, defendants 1 to 9 can use the every inch of the passage but the right of the joint owners cannot be limited to a particular extent till partition takes place. Therefore, the defendants cannot contend that they can restrict the use of the passage

to 3'-00" extent by constructing wall in the remaining extent. It is against the law and therefore, the trial Court rightly granted interim injunction against the defendants. So far as wall is concerned, it was constructed recently after filing of the suit and the photos filed by the defendants themselves stood testimony of the said fact. Therefore, the trial Court rightly ordered for removal of the said wall because the existence of the wall creates hindrance for the free ingress and egress to the plaintiff, teachers, students and other staff of the educational institutions as there is no other way for them to reach the institutions in EFGH. He further argued that the contention of the learned counsel for petitioners that the plaintiff is trying to create passage through ABCD to the purchasers of the plots is a sheer imagination and such a plea was not taken by the defendants before the trial Court. He thus prayed to dismiss the CRP.

8) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this CRP to allow?"

9) **POINT:** As can be seen from the respective contentions, it is an admitted fact that respondent/plaintiff has been running the educational institutions in EFGH and the ABCD passage serves as ingress and egress to the plaintiff and the teachers, students and other staff of the educational institutions. According to plaintiff, ABCD is the only passage and there is no other way to reach EFGH and this fact has not been controverted by the petitioners/defendants. The plaintiff's right over ABCD is concerned, the defendants admitted that their vendor Nagabushana Rao had joint right along with the defendants. Therefore, it goes without saying that the plaintiff now stepped into the shoes of Nagabushana Rao and became the joint owner along with defendants in respect of ABCD. The contention of the petitioners/defendants that

since Nagabushana Rao had only 1/6th share in the common passage, they can construct a wall across ABCD by leaving a space of 3'-00" equivalent to the share of Nagabushana Rao is against the principles of law. The concept of joint ownership and common enjoyment is such that every co-owner is entitled to enjoy every part of the common party till partition takes place. Of course for convenience sake, each co-owner may enjoy a specific item of the property till partition takes place. That is not a situation here. Therefore, the contention of the petitioners/ defendants cannot be accepted. Sofaras the other contention of the petitioners that the wall was constructed way back in 2007 itself and not newly after filing of the suit is concerned, a perusal of the orders in I.A.No.137 of 2015 and I.A.No.252 of 2015 shows the trial Court on a careful perusal of the documentary evidence particularly the photographs filed by either side has rightly come to conclusion that previously what was in existence was only a small foundation line across the width of ABCD and 3'-00" wall was constructed only recently. In view of such finding which is a correct one, it is evident that the wall was constructed pending suit but not in the year 2007. It may be true that the defendants left a small passage on one side or both sides of the wall for ingress and egress of the plaintiff and his men but that paltry concession is not sufficient for full enjoyment of the rights of the plaintiff as a co-owner along with the defendants. As already stated supra, the petitioners/defendants cannot impose restrictions in the full usage of the passage by the plaintiff.

10) The next contention of the learned counsel for petitioners/defendants that the plaintiff intends to provide passage to the prospective purchasers of his sites through ABCD is concerned, the said argument cannot be appreciated for the reason that no such plea was taken in the written statement or counter and no proof is filed

either.

11) So at the outset, the impugned order passed by the trial Court is immaculate and impeccable which does not warrant any interference in this CRP.

12) In the result, I find no merits in the C.R.P. and accordingly, the same is dismissed by confirming the order of the trial Court. The petitioners/defendants are directed to remove the wall constructed by them across the plaint ABCD mentioned passages within 15 days from the date of this order, failing which the respondent/plaintiff can execute the order in I.A.No.252 of 2015 through the trial Court. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 15.03.2016
scs