

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.730 OF 2016

ORDER:

This Revision is filed by the defendants 1 to 10 in O.S.No.31 of 2011 on the file of the Court of the Junior Civil Judge, Kanigiri under Article 227 of the Constitution of India, challenging the order dated 18.11.2015 passed by the said Court in I.A.No.968 of 2015.

2. Heard Sri Md.Saleem, learned counsel, appearing for the petitioner and Sri V.V.L.N.Sharma, learned counsel, appearing for the 1st respondent/plaintiff.

3. The first respondent herein instituted the suit for permanent injunction. The 9th defendant filed written statement and by way of a memo the defendants 1, 2, 4, 6 and 8 adopted the same. In the said suit, the first respondent/plaintiff filed the present I.A.No.968 of 2015, praying the Court below to return the documents namely Unmarked Pattadar Pass Books and Title Deed. The defendants 1, 2 and 4 to 10 filed a counter, opposing the said application. The learned Junior Civil Judge, Kanigiri, passed an order dated 18.11.2015, allowing the said application. The said order is under challenge in the present revision.

4. It is contended by the learned counsel for the petitioner that the order impugned is erroneous and contrary to law. It is the further contention of the learned counsel for the petitioner that had the contents of the counter filed by the defendants been taken into consideration, the order impugned would not have emanated. It is also submitted that in the absence of any reasons assigned by the learned Judge, the impugned order cannot be sustained in the eye of law.

5. On the contrary, it is vehemently contended by the learned counsel for the 1st respondent/plaintiff that there is no illegality nor there is any infirmity in the impugned order and the court below is perfectly justified in allowing the application filed by the plaintiff in the interest of justice.

6. A perusal of the impugned order clearly discloses that the learned judge while allowing the application did not assign any reasons nor considered the objections raised by the defendants by way of counter. This in the considered opinion of this Court cannot be sustained in the eye of law.

7. When the defendants/petitioners herein opposed the application filed by the plaintiff by way of filing counter, it would be obligatory on the part of the Court below to consider the contents of the said counter and pass appropriate orders. The said exercise is conspicuously absent in the instant case. Therefore, this Court is of the opinion that the issue requires reconsideration by the Court below.

8. For the aforesaid reasons, Revision is allowed, setting aside the order dated 18.11.2015 passed by the Court below in I.A.No.968 of 2015 in O.S.No.31 of 2011 and the matter is remanded to the Court below for fresh consideration, in accordance with law, after giving complete opportunity to all the stake holders, within a period of two months from the date of receipt of a copy of this order.

9. The Miscellaneous petitions pending consideration, if any, in the Civil Revision petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

11.03.2016
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