

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.5890 OF 2016

DATED:23-12-2016

Between:

Marupilla Appala Raju ... Petitioner

And

Peesa Thammunaidu ... Respondent

COUNSEL FOR THE PETITIONER: Mr. Sitaram Chaparla

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.07.09.2016 in I.A. No.30 of 2015 in O.S. No.121 of 2009 (old I.A. No.14 of 2011 in O.S. No.121 of 2009) on the file of the Principal Junior Civil Judge, Bheemunipatnam.

The respondent filed the aforementioned suit for perpetual injunction. Pending the suit, he has filed I.A. No.264 of 2009 for an ad interim injunction and the same was granted by the lower Court. The petitioner, who is the defendant in the suit, filed the aforementioned I.A. under Order XIV Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) to decide the issue as to whether the respondent/plaintiff was in possession of the suit schedule property based on the pleadings on oath available before the Court, as a preliminary issue. By the order impugned in this civil revision petition, the lower Court has dismissed the said I.A.

The lower Court in the impugned order observed that in paragraph 6 of the affidavit in I.A. No.380 of 2009 the petitioner has admitted that he encroached the schedule property and feeling aggrieved thereby the respondent filed W.P. No.18249 of 2010 and obtained police protection. Based on the said fact, the lower Court has found that the question of possession of the respondent/plaintiff as on the date of filing of the suit was not in dispute and that no issue in that regard need be framed as a preliminary issue.

Under sub-rule (2) of Rule 2 of Order XIV of CPC where issues of both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to (a) the jurisdiction

of the Court, or (b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. A careful reading of this provision would show that in one or both of the following contingencies only the Court is vested with the discretion to dispose of the case on a preliminary issue, namely, (i) the jurisdiction of the Court or (ii) bar to the suit created by any law for the time being in force. The issue raised by the petitioner, namely, whether the respondent was in possession of the suit schedule property as on the date of filing of the present suit does not fall in either of the two issues referred to in sub-rule (2) of Rule 2 of Order XIV of CPC. Therefore, the said issue raised by the petitioner cannot be decided as a preliminary issue.

For the aforementioned reasons, I do not find any merit in this civil revision petition and the same is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.7665 of 2016 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

23-12-2016

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