

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

CMA.Nos.973 and 974 of 2015

COMMON ORDER:

Since these two appeals are between the same parties and arise out of one appeal suit, this Court deems it appropriate to dispose of these two Civil Miscellaneous Appeals by way of this common order.

2. The defendants 6 and 7 in O.S.No.315 of 2002, on the file of V Additional Senior Civil Judge, Ranga Reddy District are the appellants in the present Civil Miscellaneous Appeals, filed under Order 43 Rule 1 of the Code of Civil Procedure.

3. Heard the learned counsel appearing for the appellants and the first respondent.

4. The second respondent herein instituted suit, O.S.315 of 2002, on the file of the Court of the V Additional Senior Civil Judge (FTC), Ranga Reddy District for partition and separate possession of the suit schedule property admeasuring Ac.1-38 gts situated in Sy.No.12 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District into six separate shares by metes and bounds and to allot one such share to the plaintiff. The learned Judge dismissed the said suit by way of Judgment and Decree dated 25.11.2013. Questioning the said judgment and decree, the defendant No.12, who is the first respondent herein, preferred A.S.No.57/2014 on the file of the Court of the XIV Additional and Sessions Judge, Ranga Reddy District. Along with the said appeal suit, the appellant in A.S.No.57 of 2014 filed I.A.No.49 of 2015 under the provisions of Order 39 Rules 1 and 2 praying for temporary injunction to restrain respondents in the appeal from interfering with the possession of the schedule property and I.A.No.50 of

2015 under Order 39 Rules 1 and 2 for temporary injunction to restrain the respondents in the appeal from alienating the suit schedule land. The 8th respondent in the appeal, who is the appellant No.2 in the present Civil Miscellaneous Appeals, filed a counter, resisting the said applications. The learned XIV Additional District and Sessions, Ranga Reddy District, by way of orders dated 01.06.2015 disposed of the said applications, directing both the parties to maintain *status quo* till the disposal of the appeal and the said orders passed in I.A.Nos.49 and 50 of 2015 are under challenge in the present CMAs filed under Order 43 Rule 1 of the Code of Civil Procedure.

5. According to the learned counsel for the appellants, the learned District Judge grossly erred in ordering *status quo* having found no case in favour of the first respondent and that the same is opposed to the very spirit and object of the provisions of the Order 39 Rules 1 and 2 of the Code of Civil Procedure. It is the further submission of the learned counsel for the appellants that there is absolutely no justification on the part of the learned District Judge in granting order of *status quo*, without recording any reasons.

6. On the contrary, it is strenuously contended by the learned counsel for the first respondent that there is no infirmity in the impugned order and in the absence of the same the orders impugned are not amenable for any interference of this Court under Order 43 Rule 1 of the Code of Civil Procedure. It is further submitted that keeping in view the interest of the parties, the learned District Judge granted order of *status quo* and in the event of the appellants being permitted to proceed with the construction and sale of property taking advantage of the decree passed in his favour, the first respondent would suffer irreparable loss and the matter gets complicated with the involvement of the third parties.

7. The case of the defendant No.12 who is the petitioner in I.A.No.49 of 2015 and I.A.No.50 of 2015 in the affidavit filed in support of the said applications is that the legal heirs of the 5th defendant are trying to erect and install concrete cement poles in and around the suit schedule property for arranging the iron sheets and fencing with the help of anti-social elements by force and illegal means to defeat his lawful rights i.e., peaceful possession and enjoyment. It is also stated that pending the suit, there was *status quo* order vide orders in I.A.No.694 of 2002 dated 10.04.2002. It is further pleaded that he got *prima facie* case and balance of convenience in his favour and in the event of permitting the appellants herein to erect and install concrete cement poles in and around the suit schedule property for arranging the iron sheets and fencing, he will be put to irreparable loss and injury.

8. On the other hand, it is the case of the appellants herein in their counter in I.A.Nos.49 and 50 of 2015 that the 8th respondent undertook erection of fencing (with iron sheets) around the property to protect it from trespassing etc., and she has the right, title and interest to safeguard the property and to enjoy the same. It is further stated that the *status quo* order passed in I.A.No.694 of 2002 dated 10.04.2012 during the pendency of the suit was granted in all together a different context when there was no finding on Ex.B.39, as such, the petitioner in I.As. cannot seek any shelter under the orders passed in I.A.No.694 of 2002. It is further averred that the petitioner in I.As.49 and 50 came on record as one of the Legal Representatives of respondent No.2 and is fighting a chance litigation and that there is no balance of convenience and *prima facie* case in favour of the petitioner in I.As.

9. A perusal of the orders under challenge clearly discloses that the learned Judge categorically observed that any developmental activity or any construction or erection of tin sheets will be subject to the result of the appeal. The Court also observed that the 8th respondent (appellant No.2 herein) as already stated that she undertook erection of fencing with iron sheets around the property much earlier to the filing of the petition.

10. In I.A.No.50 of 2015 the learned Judge observed that the petitioner failed to establish that the respondent intended to sell away the schedule property and it discloses that it is an illusion. The learned Judge further observed that the Court is of the considered view that if any alienations are made by the respondents, the same shall be subject to the result of the appeal. While pointing out the said observations made by the Court below, it is submitted by the learned counsel for the appellants that having made such observations, there is no justification on the part of the Court below to grant order of *status quo* without assigning any reasons. This Court finds sufficient force in the said submission.

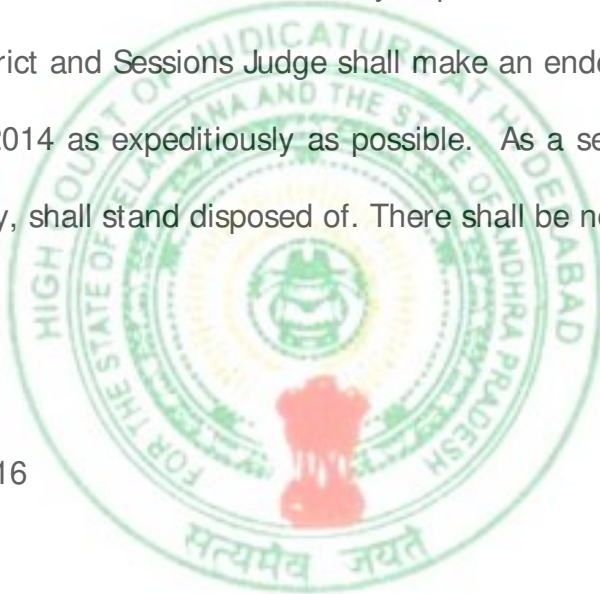
11. After giving thoughtful consideration to the issues involved and taking into consideration the submissions of the learned advocates appearing for the respective parties, this Court is of the considered opinion that the ends of justice would be served if the *status quo* order is allowed to continue to the extent of creating encumbrance on the subject property while lifting the status quo granted in I.A.No.49 of 2015. This Court deems it appropriate to make this arrangement in view of the reason that if any encumbrances are made on the subject property the same would lead to multiplicity of litigation. Though the learned Advocates appearing for both sides have advanced their contentions also, touching the merits of the main appeal suit,

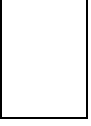
this Court does not propose to consider the same at this interlocutory stage as the same would have impact on the final adjudication of the appeal.

12. In the result, CMA.No.973 of 2015 is allowed, setting aside the order dated 01.06.2015 passed in I.A.No.49 of 2015 on the file of the Court of XIV Additional District Judge, Ranga Reddy District and consequently I.A.No.49 of 2015 is dismissed and CMA.No.974 of 2015 is dismissed confirming the order dated 01.06.2015 passed in I.A.No.50 of 2015 on the file of the XIV Additional District and Sessions Judge, Ranga Reddy District. It is also made clear that if any constructions are made pursuant to this order, the appellants are not entitled to claim any equities in future. The learned Additional District and Sessions Judge shall make an endeavour to dispose of A.S.No.57 of 2014 as expeditiously as possible. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

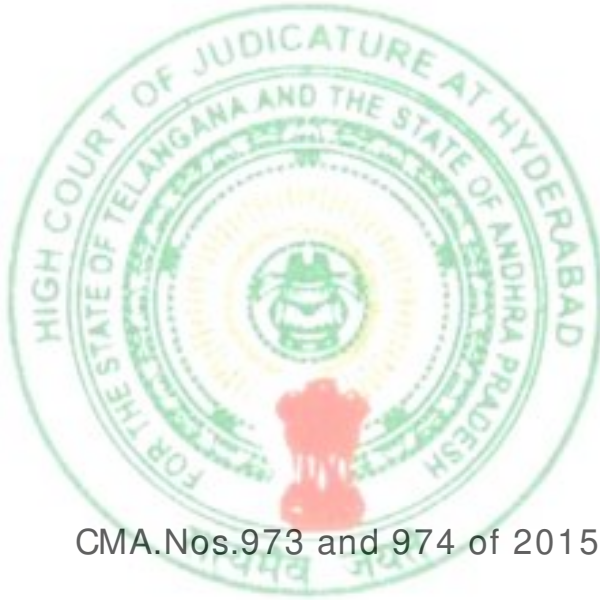
A.V.SESHA SAI, J

Date:28.09.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



CMA.Nos.973 and 974 of 2015

Dated: .09.2016

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