

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5330 OF 2017

ORDER:

Assailing the order, dated 20.06.2017, passed in C.M.A.No.10 of 2017 on the file of V Additional District Judge, East Godavari at Rajamahendravaram, the present revision petition is filed under Article 227 of the Constitution of India.

2. The circumstances which lead to the filing of the present revision petition are as under:

The petitioner – plaintiff filed O.S.No.779 of 2016 on the file of Principal Junior Civil Judge, Rajamahendravaram, seeking declaration. Along with the said Suit, he filed an application for interim injunction restraining the respondent – defendant from interfering with the subject property and also proceeding further with the construction in respect of 22 Square Yards of land, which is in the form of a triangle, situated towards north of the property covered by terraced building bearing No.2-100, Main Road, Rajanagaram.

The petitioner herein claims to be the absolute owner of the vacant site admeasuring 122 Square Yards of land covered by D.No.2-100, Main Road, Rajanagaram. It is stated that his father, late Venkataratnam, purchased the said land under two sale deeds, dated 03.11.1937 and 01.04.1964, and obtained vacant possession of the same. He died intestate on

09.04.1993 leaving his wife, daughter and the petitioner. Mother of the petitioner also died intestate on 29.08.1994 and thereafter, the petitioner and his sister succeeded to the estate of their parents. It is the case of the petitioner that he and his sister entered into partition on 09.06.2003 vide partition deed bearing No.2113/2003. While things stood thus, disputes arose with the respondent, who, according to the petitioner, encroached into the land of the petitioner to an extent of 22 Square Yards. As such, O.S.No.779 of 2016 came to be filed by the petitioner for declaration of title and I.A.No.2165 of 2016 was also filed for grant of temporary injunction against the respondent, pending the Suit. Vide order, dated 15.02.2017, the Principal Junior Civil Judge, Rajamahendravaram, granted temporary injunction in favour of the petitioner, restraining the respondent and his men from encroaching upon the schedule property by making constructions, pending disposal of the Suit.

Challenging the same, the respondent filed C.M.A.No.10 of 2017. Vide order, dated 20.06.2017, the appellate Court allowed the C.M.A., basing on the undertaking given by the General Power of Attorney (G.P.A.) Holder of the respondent that the respondent will not transgress into the property claimed by the petitioner and that he will also see that constructions will be proceeded in the manner stated in the

undertaking, without insisting upon equities in his favour. Challenging the same, the present revision petition is filed.

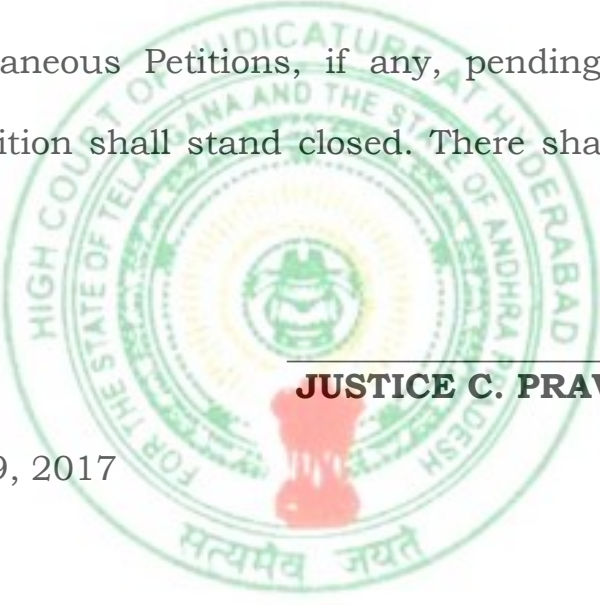
3. Sri T.V.S. Prabhakar Rao, learned counsel for the petitioner, would submit that the undertaking given by the G.P.A. holder itself cannot be accepted. He would further submit that in the absence of any finding given by the appellate Court with regard to the possession, the appellate Court erred in vacating the injunction granted by the trial Court on the basis of the undertaking given by the G.P.A. holder of the respondent. It is also his case that if really the respondent is the owner of the property, nothing prohibited him from filing the registered sale deed.

4. On the other hand, Sri Ch. Pushyam Kiran, learned counsel for the respondent, would submit that as on today the entire construction is over and there is no point in vacating the order passed by the appellate Court.

5. Learned counsel for the petitioner disputes completion of the construction. According to him, the building is still under construction. He further pleads that a direction may be given to the trial Court for disposal of the suit itself and till such time, the respondent be directed to maintain *status quo* with regard to the alleged construction made in the subject property.

6. Having regard to the rival submissions made, the present Civil Revision Petition stands disposed of directing the respondent to maintain *status quo* as to the construction made or to be made in the disputed property, till the disposal of the main Suit. It is needless to mention that the trial Court shall take steps for disposal of the main Suit itself as expeditiously as possible, preferably within a period of eight to twelve months from the date of receipt of a copy of this order.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.



JUSTICE C. PRAVEEN KUMAR

December 29, 2017
MD