

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5559 OF 2016

O R D E R

The petitioner is the plaintiff in O.S.No.257 of 2016 on the file of the learned Additional Junior Civil Judge-cum-XVI Metropolitan Magistrate, Cyberabad, Kukatpally, filed by him for a perpetual injunction restraining the defendants from interfering with his possession and enjoyment of the suit schedule property. The suit schedule property was shown as the house bearing No.22-84/A Part, admeasuring 400 square yards, situated in Sy.No.124 of Kukatpally Village, Eenadu Society, GHMC Kukatpally Circle, Balanagar Mandal, Ranga Reddy District. The petitioner/plaintiff filed I.A.No.440 of 2016 in the said suit seeking an *ad interim* injunction restraining the defendants from entering into and interfering with his peaceful possession and enjoyment of the suit schedule property.

By order dated 29.07.2016, the trial Court initially granted an *ad interim* injunction as prayed for *ex parte*. Thereupon, defendant 1 in the suit filed his counter stating that the petitioner/plaintiff was encroaching on the area earmarked as a road in the layout and that, under the guise of the injunction granted in his favour, there was every possibility that the petitioner/plaintiff would grab the public road. He, therefore, sought dismissal of the I.A. Thereupon, the trial Court passed docket order dated 03.11.2016 observing that defendant 3 in the suit was yet to be served but taking note of the contention of defendant 1 that the petitioner/plaintiff was raising constructions to avoid lawful interference and that awaiting service of notice upon defendant 3 was not necessary as he was the vendor of the petitioner/plaintiff. Under the said docket order, the trial Court

directed both parties to maintain *status quo* until disposal of the I.A. The I.A was adjourned for the counter of defendant 2 and to await service of notice upon defendant 3. Aggrieved by this modification of the interim injunction granted earlier, the petitioner/plaintiff is before this Court under Article 227 of the Constitution.

Heard Sri P.Ganga Rami Reddy, learned counsel for the petitioner/plaintiff, and Sri Sudarshan Reddy Duddugunta, learned counsel for respondent 1/defendant 1. Respondents 2 and 3, defendants 2 and 3 in the suit, are shown as not necessary parties to this revision.

By order dated 04.11.2016, this Court granted interim suspension of the docket order dated 03.11.2016.

Sri P.Ganga Rami Reddy, learned counsel, would contend that the trial Court ought not to have modified the earlier injunction granted in favour of his client.

Per contra, Sri Sudarshan Reddy Duddugunta, learned counsel, would assert that by virtue of the *ad interim* injunction granted in his favour, the petitioner/plaintiff was continuing with construction by occupying the area earmarked as a public road. He would further assert that the permission secured by the petitioner/plaintiff from the municipal authorities for undertaking this construction was without verification of the ground reality and the layout plan. He would point out that his client is the owner of the plot adjacent to the area earmarked as a road and would therefore be vitally affected by the occupation thereof by the petitioner/plaintiff under the guise of the earlier interim injunction. He would therefore assert that, in these circumstances, the trial Court was justified in modifying the earlier injunction order to a *status quo* order applicable to both parties.

Though Sri P.Ganga Rami Reddy, learned counsel, would assert that the layout sought to be relied upon by respondent 1/defendant 1 is not an approved layout, it is wholly premature for this Court to go into that issue at this stage. The fact remains that the said layout plan, *prima facie*, seems to be the basis for demarcation of the plots in which both parties are seeking rights. As per the same, respondent 1/defendant 1 owns the plot immediately adjacent to the area earmarked as a road. His contention is that the petitioner/plaintiff is occupying this area while making construction.

That being so, permitting the petitioner/plaintiff to continue with the construction under the protection of the *ad interim* injunction granted earlier would irreparably injure the interests of respondent 1/defendant 1 if his stand is ultimately accepted.

Order 39 Rule 4 CPC vests the Court with the power to vary or modify the order granted earlier under Order 39 Rules 1 and 2 CPC. The counter-affidavit filed by respondent 1/defendant 1 is sufficient to warrant exercise of power under this provision. In these circumstances, maintaining *status quo* in all respects pending final adjudication of the I.A. by the trial Court was in the interest of justice. The docket order under revision therefore does not warrant interference on any ground.

The civil revision petition is devoid of merit and is accordingly dismissed. Interim order dated 04.11.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

27th JANUARY, 2017

PGS