

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.992 of 2017

ORDER:

Heard and perused the records.

2. The present civil revision petition is filed against the order dated 04.01.2017 passed in C.M.A.No.14 of 2016 in I.A.No.1097 of 2014 in O.S.No.455 of 2014 on the file of Principal District Judge, Chittoor, wherein the appeal preferred by the second defendant was dismissed.

3. The facts in issue are as under:

The plaintiff preferred a suit with the following prayer:

- a) Granting permanent injunction restraining the defendants, their men, followers from dispossessing the plaintiff from the plaint schedule property, till the plaintiff is duly evicted in accordance with law.
- b) restraining the defendants from in any manner altering, changing or making any further construction in plaint schedule property till plaintiff is duly evicted in accordance with law, or till such time the defendants work out their remedy through court of law, in respect of plaint schedule property;
- c) directing the defendants to pay the costs of the suit.

Pending the said suit, the plaintiff preferred I.A.No.1097 of 2014 seeking temporary injunction till the disposal of the main suit. Keeping in view the circumstances of the case, the trial Court allowed the said I.A. by restraining the defendants, their

men, agents from in any manner altering, changing or making any further construction in the petition schedule property till the disposal of the main suit. Aggrieved thereby, the second defendant preferred C.M.A.No.14 of 2016 and the same was dismissed on the ground that there is material to show that the respondents are entitled for interim injunction and that the order passed in I.A. cannot be said to be illegal or unsustainable. Aggrieved by the same, the present civil revision petition came to be filed by the second defendant.

4. The learned counsel for the petitioner mainly contends that since the petitioner herein was in possession of the property and as on date of filing of the suit he is co-owner of the said property, the petitioner is entitled for interim injunction.

5. It is to be noted that documents which are marked along with I.A. do not anywhere establish that the petitioner is the co-owner of the property. The learned counsel for the petitioner himself was not able to demonstrate the same basing on the documents filed along with I.A. and which were marked as Exhibits. However, he intends to place reliance of some documents which were neither produced before the Court below nor marked in the I.A. The said documents cannot be looked into at this stage as they were not produced and no explanation is forthcoming as to why they were not produced. It is to be noted that admittedly the plaintiff preferred the original suit for permanent injunction not to interfere with her possession and enjoyment of the property in dispute and not to make any

alterations or constructions, contending that, she has been in settled possession of the said property. It is also to be noted that admittedly the said property was acquired by the mother-in-law of the plaintiff, who is no other than the mother of the defendants under registered Sale deed dated 22.06.1965 and subsequently she died. It is the contention of the first defendant that her mother executed an unregistered Will bequeathing the said property to her and hence she has absolute rights and title over the said property. In respect of the same, the first defendant filed O.S.No.608 of 2009 and preferred an appeal which was pending. But, it is to be noted that the first defendant did not prefer any Civil Miscellaneous Appeal challenging the order of interim injunction impugned herein. According to the second defendant/petitioner herein is entitled for 1/3rd share in the property. In view of the admissions made by the petitioner that it is the plaintiff who is now in possession of the property and that the properties are not divided, the defendants are not entitled to resist the relief sought by the plaintiff restraining him from making any constructions and from dispossessing her illegally without having recourse to her eviction under due process of law and making constructions high handedly. Further, the rights of the parties over the suit schedule property could be considered by the trial Court in the main suit. Since there has been a cloud in respect of the rights of the parties over the property in question and since there are two other suits pending in respect of the said property, plaintiff is entitled for interim injunction restraining the

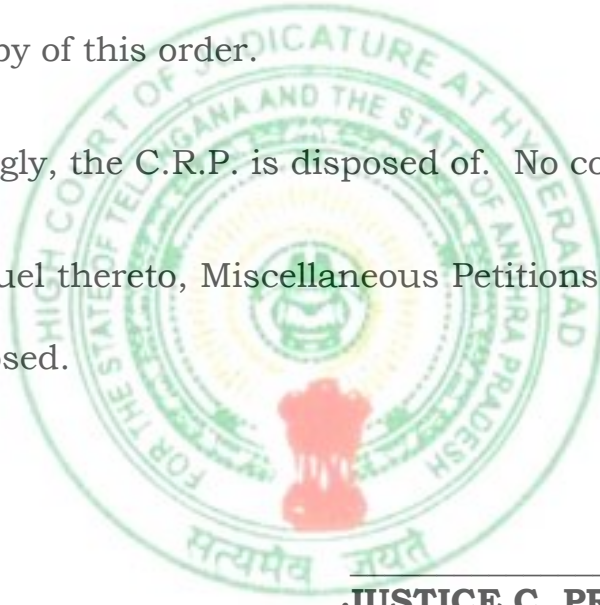
second defendant from making any further constructions and from dispossess her illegal.

6. In view of the above, the request of the petitioner is rejected. At this stage, learned counsel for the petitioner submitted that a direction may be given to the trial Court for disposal of the case, at the earliest.

7. Having regard to the facts and circumstances of the case, the trial Court shall dispose of the case as early as possible, preferably within a period of six to eight weeks from the date of receipt of a copy of this order.

8. Accordingly, the C.R.P. is disposed of. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

08.03.2017

vhb