

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5324 and 5325 of 2016

COMMON ORDER:

1) C.R.P.No.5324 of 2016 is filed, aggrieved by the order dated 21.09.2016 passed in I.A.No.1033 of 2016 in O.S.No.601 of 2011 on the file of the Principal Junior Civil Judge, Tirupathi, wherein an application filed under Order XVI Rule 7 read with Section 151 of C.P.C. to summon the Tahsildar, Tirupati Urban Mandal, the Executive Officer, Settipalli Panchayat, Tirupati Urban Mandal, to produce the documents pertaining to the plaint schedule property was dismissed.

2) C.R.P.No.5325 of 2016 is filed, aggrieved by the order dated 21.09.2016 passed in I.A.No.1032 of 2016 in O.S.No.601 of 2011 on the file of the Principal Junior Civil Judge, Tirupathi, wherein an application filed to re-open the suit was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

The respondent herein filed O.S.No.601 of 2011 seeking permanent injunction restraining the petitioners herein, their men, agents, followers, servants, associates or anybody in any manner from interfering with his peaceful possession and

enjoyment of the plaint schedule property. After completion of evidence of both sides and when the suit was posted for arguments, the petitioners/defendants filed I.A.Nos.1032 and 1033 of 2016 seeking re-open the suit and to summon the Tahsildar, Tirupati Urban Mandal and Executive Officer, Settipalli Panchayat. The averments in the affidavit filed in support of the petition would show that the plaintiff has been residing in a house bearing Door No.10-193 (old D.No.10-165) in Ambedkar Colony of Manglam, Settipalle Panchayat and that there is no such door number in Ambedkar Colony and in fact the concerned revenue authorities after due enquiry issued house site pattas in Ambedkar Colony and Sapthagiri Colony to the landless poor in the year 1993 and the respective pattadars have been in possession and enjoyment of the same. It is also stated that the plaintiff is no way concerned with the plaint schedule property and there is no such plot with the boundaries mentioned in the schedule. It is the case of the petitioners that without examining the Tahsildar, Tirupati Urban Mandal and the Executive Officer, Settipalle Panchayat, it is not possible for them to establish that the plea taken by the plaintiff is false and the plaintiff is never in possession and enjoyment of the schedule property.

5) No counter is filed by the plaintiff. After considering the material on record, the trial Court dismissed both the applications. Challenging the same the present revisions are filed.

6) It is to be noted that the suit is of the year 2011 and when the case is posted for arguments of the petitioners/ defendants, they came up with the present petitions, namely to re-open the suit and to summon the Tahsildar, Tirupati Urban Mandal to produce the documents pertaining to the plaint schedule property stating that the Tahsildar, Tirupati Urban Mandal after due enquiry issued house site pattas in Ambedkar Colony, Sapthagiri Colony in favour of eligible persons in the year 1993. It is urged that one S.Fakrubi was also allotted plot No.420A and she has been in continuous possession and enjoyment of the same by raising a house with asbestos sheet roof. The plaintiff is no way concerned with the plaint and there is no such plot number. It is said that in order to prove the said facts, the evidence of Tahsildar is very much essential.

7) It is to be noted that the petitioners have taken the said plea in the written statement itself, but failed to take any steps at the earliest point of time. During the course of trial also they kept quiet without taking any steps for production of the witness and the documents. When the suit is posted for arguments, the petitioners have come up with the present petitions only to delay the proceedings. Admittedly, the suit is filed for permanent injunction and the said Fakrubi is not a party to the proceedings. The burden lies on the respondent/plaintiff to establish his possession and enjoyment over the suit schedule property and the petitioners cannot step into the shoes of the plaintiff.

8) For the aforesaid reasons, I do not find any illegality or irregularity in the order passed by the trial Court. Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

C. PRAVEEN KUMAR, J

07.03.2017
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