

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

C.R.P.No.4482 of 2016

ORDER:

Defendant in O.S.No.536 of 2014 on the file of Principal Junior Civil Judge, Ananthapuram is the petitioner herein in the present revision filed under Article 227 of the Constitution of India.

2. The present revision assails the order dated 8.6.2016 passed by the learned District Judge, Ananthapuram in C.M.ANo.16 of 2015.

3. Heard Sri Harish Kumar Rasineni, learned counsel for petitioner and Sri B.S.Venkata Ramesh, learned counsel for respondent, apart from perusing the material available on record.

The facts and circumstances leading to the filing of the present revision are as under:

4. The respondent herein instituted the above said suit against the petitioner herein for permanent injunction to restrain the defendant/petitioner herein, his men, agents and followers to link up his plots in S.No.3/7 to 33 feet road as shown in ABCD in plaint plan situated on the Eastern side of the suit schedule property.

5. Along with the said suit, respondent herein also filed I.A.No.1659 of 2014 under the provisions of Order 39 Rules 1 and 2 of CPC for temporary injunction. The petitioner herein contested the said I.A. by filing counter. During the course of enquiry in the said I.A.No.1659 of 2014, the respondent herein filed Exs.P1 to P5 to substantiate her case. The learned Principal Junior Civil Judge, Ananthapuram by way of an order dated 19.1.2015 dismissed the said I.A. Challenging the said order passed by the trial Court,

the respondent herein preferred C.M.A.No.16 of 2015 under the provisions of Order 43 Rule 1 of CPC before the Court of District Judge, Ananthapuram. The learned District Judge, by way of order dated 8.6.2016, allowed the said appeal, granting temporary injunction in favour of plaintiff/respondent herein. The validity and legal sustainability of the said order passed by the learned District Judge, Ananthapuram is under challenge in the present revision.

7. It is contended by the learned counsel for the defendant/petitioner herein that the order under challenge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 39 Rules 1 and 2 of CPC; that there is absolutely no justification on the part of the lower appellate Court in disturbing the well considered order passed by the trial Court; that in the absence of necessary ingredients of Order 39 Rules 1 and 2 of CPC in favour of plaintiff/respondent herein, the lower appellate Court grossly erred in granting injunction without assigning any proper and valid reasons; that the impugned order is based on assumptions and presumptions and in utter disregard of the material available on record.

8. On the contrary, it is contended by the learned counsel for the plaintiff/respondent herein that there is absolutely no error, nor there exists any infirmity in the questioned order, as such, the same is not amenable to judicial review under Article 227 of the Constitution of India. It is further submitted by the learned counsel that in view of valid reasons assigned by the lower appellate Court in the order under challenge, the interference of this Court under Article 227 of the Constitution of India is unwarranted. It is also submitted by the learned counsel that before the lower appellate Court, the petitioner herein remained *ex parte* and did not contest the appeal and that the petitioner did not file any documents before the trial Court in support of his stand.

9. Therefore, in the above background, now the issue that emerges for consideration of this Court is “whether the order passed by the lower appellate Court, which is impugned in the present revision, is sustainable and tenable or whether the same warrants any interference of this Court under Article 227 of the Constitution of India” ?

10. The information available before this court manifestly discloses that in the suit for permanent injunction, the respondent herein filed I.A.No.1659 of 2014 for temporary injunction and in support of her case, she filed Exs.P1 to P5 documents before the trial Court. The trial Court at paragraph 13 of its order found the existence of prima facie case in favour of plaintiff/respondent herein, but observed non-availability of balance of convenience and likelihood of loss or damage to the plaintiff. The said order was appealed before the appellate Court under Order 43 Rule 1 of CPC and the learned District Judge, after elaborately discussing about the documents filed by the plaintiff/respondent herein came to a categorical conclusion that necessary ingredients of Order 39 Rules 1 and 2 of CPC are in favour of plaintiff/respondent herein. The impugned order further discloses that the learned District Judge categorically found from the photographs filed, the possibility of laying road connecting to 33 feet road in question from Sasivadan Township and also took into consideration the non-existence of structures on the west of 33 feet road and ultimately found that continuance of statusquo would be a convenient measure to protect the right of the respondent herein. The lower appellate Court also recorded a finding that no new inconvenience will be caused to Sasivadan Township or defendant/petitioner herein. The lower appellate Court also took note of the issue that if the road is connected removing the footpath, beam and trees etc., serious inconvenience will be caused to plaintiff/respondent herein. In fact, while

setting aside the order of the trial Court, the lower appellate Court recorded valid and convincing reasons for granting equitable relief of injunction in favour of plaintiff/respondent herein.

11. It is a settled and well established principle of law that unless the order impugned suffers from patent perversity and jurisdictional error, invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. In the instant case, this Court does not find any such contingency. As such, this Court is not inclined to meddle with the order under challenge.

12. For the aforesaid reasons, the Civil Revision Petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 20.1.2017
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A.V.SESHA SAI, J

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20.1.2017

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