

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3639 of 2017

ORDER:

This Revision Petition is filed by the petitioner challenging the Order dt.12-05-2017 in C.M.A.No.9 of 2017 of the II Additional District Judge, West Godavari, Eluru modifying the order dt.30-01-2017 in I.A.No.90 of 2017 of the Principal Senior Civil Judge, Eluru.

2. The petitioner herein is the plaintiff in the suit. She filed the said suit against the respondent for perpetual injunction restraining the respondent from interfering with her possession and enjoyment of the plaint schedule property and also her easementary right of ingress and egress to 'ABCD' passage mentioned in the plaint plan.

3. She filed I.A.No.90 of 2017 under Order 39 Rules 1 and 2 CPC for grant of temporary injunction restraining the respondent and others from interfering with her peaceful possession and enjoyment over the plaint schedule property along with her easementary right of ingress and egress to the 'ABCD' passage and also for joint right over the bore well.

4. By order dt.30-01-2017 the said application was allowed and the relief sought for was granted.

5. This was assailed by the respondent in C.M.A.No.9 of 2017 before the II Additional District Judge, West Godavari, Eluru. The said appeal was allowed in part by the said Court on 12-05-2017. The said Court did not interfere with the injunction granted by the trial Court with regard to the bore-well. However, as regards the right of passage, it held that the petitioner cannot enjoy her right of passage as ingress and egress to her property whenever she takes any vehicle for transport of fruits and manures for the trees unless she gives prior intimation to the respondent in that regard.

6. Assailing the same, this Revision Petition has been filed.

7. Learned counsel for the petitioner contends that the condition imposed by the lower appellate Court for obtaining prior intimation of the respondent to the using of the passage is unwarranted, and when the petitioner also admittedly has a right to use the said passage, the same cannot be restricted by imposing such a condition. He also contended that no reason is assigned by the lower appellate Court for imposing this condition for use of the passage.

8. Sri S.M.Rafee, learned counsel for the respondent, however contended that there is dispute over the width of the passage; that the petitioner contends that the width is 7 yards on the basis of a recital in the sale deed in his favour, but in the link document to that sale deed, the width of the passage is not mentioned, and since the

width of the passage is disputed, in order to safe guard the property of the respondent, such a condition might have been imposed.

9. I am unable to agree with the said submission. It may be that there is dispute about the width of the passage which requires to be decided at the time of trial, but that is not a ground to compel the petitioner to give prior intimation to the respondent before she exercises her right to use the passage; and there is no connection between the imposition of the condition and the dispute about the width of the passage.

10. Therefore to the extent the lower appellate Court has imposed such a condition, the order is set aside.

11. Accordingly, the Civil Revision Petition is allowed to the above extent and the trial Court is directed to expedite to disposal of the suit. No costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-10-2017
kvr