

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.Nos.767 & 980 of 2017

COMMON ORDER

Since the parties and the issue involved in both the revision petitions are one and the same, they are being disposed of by this common order.

These civil revision petitions are directed against separate orders dated 10.11.2016 passed in I.A.Nos.1809 & 1810 of 2016 in O.S.No.212 of 2012 respectively by the Principal Junior Civil Judge, Chirala.

The petitioner is the plaintiff and respondent is the defendant.

The plaintiff, who is a tenant of the premises owned by the defendant, filed a suit for permanent injunction restraining the defendant from dispossessing it from the suit schedule property till its lawful eviction. After completion of evidence, the plaintiff filed I.A.No.1809 of 2016 seeking to re-open the suit to examine Sub-Registrar, Chirala and I.A.No.1810 of 2016 was filed seeking to summon the Sub Registrar, Chirala, for giving evidence on the existence of Will dated 18.8.2003. Both the applications were dismissed *vide* separate orders dated 10.11.2016. Challenging the same, the present revisions are filed.

The petitioner-plaintiff filed the above applications stating that the father of the defendant during his life time gave a copy of the Will to it and the said Will was executed in favour of the brother of the respondent-defendant. Further, the defendant never demanded the petitioner for payment of the rent at any point of time, but when a demand was made, it sent the rent through money order. However, the defendant declined to receive the same. In those circumstances, the petitioner wanted to summon the Sub-Registrar in order to ascertain the existence of the Will dated 18.8.2003.

No counter was filed by the defendant before the trial Court.

After hearing the learned counsel on either side, the trial Court dismissed the said applications with costs by holding that the Court did not frame any issue with regard to correctness of the Will 18.8.2003 or proof of the Will. In view of the same, the question of summoning Sub-Registrar does not arise at all. Further, the petitioner could not offer any explanation with regard to the need and necessity to examine the Sub Registrar, who is no way connected to the suit schedule property.

Admittedly, the petitioner-plaintiff filed the suit seeking permanent injunction restraining the defendant from

dispossessing it from the suit schedule property till its lawful eviction. It clearly shows that the petitioner is not the owner of the property. The petitioner also admitted in the affidavit that it sent rent through money order on demand made by the defendant. Thus, the petitioner never protested with regard to right of the defendant over the property.

In a suit for permanent injunction the proof of Will has no consequence as the right of the defendant over the suit schedule property is not disputed as could be seen from the above facts.

In the circumstances, the orders dt.10.11.2016 passed in I.A.Nos.1809 & 1810 of 2016 by the trial Court are proper and they do not warrant any interference by this Court.

Accordingly, both the Civil Revision Petitions are dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

24th March, 2017
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