

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.119 of 2017

JUDGMENT : (oral, per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has assailed order dated 4.12.2014 passed in I.A. No.2919 of 2014 in O.S. No.1039 of 2014, whereby the parties are directed to maintain *status quo* in respect of the petition schedule property till 18.12.2014 and thereafter the order of *status quo* was extended from time to time and till date the said order is in force.

2. Learned counsel for the appellant submits that the order of the Court below is contrary to the **mandate** of the Order 39 Rule 3 of C.P.C. inasmuch as no reasons **have** been assigned for the grant of *status quo* order. The order of the Court below is vitiated and illegal inasmuch as the Court below has failed to record reasons for its opinion that object of granting an injunction would be defeated by the delay. The Court below also failed to see that the 1st respondent-plaintiff approached the Court with unclean hands by concealing the facts. The Court further failed to see that the 1st respondent has no right, title or interest in the subject property of the suit inasmuch as the father of the 1st respondent had entered into a partition deed and divested himself of all interest in the suit schedule property.

3. Counsel on behalf of the appellant has prayed this Court that let order dated 4.12.2014 be set aside and appellant may be permitted to argue before the Court below and thereafter the lower Court may pass an order afresh on merits.

4. It is not in dispute that in Order 39 Rule 3 petition the interim injunction normally be granted after hearing both parties. However, there is no embargo in passing the *ex parte* interim order if the Court feels that the purpose of the petition will be defeated if delay is caused by issuing notice to the other side.

5. Without commenting on the merits of the case, however, we hereby quash the order dated 4.12.2014 and direct the Court below to allow the appellant to be a party on filing petition within three weeks from today. Thereafter, the Court below shall hear the appellant and other parties concerned and thereafter pass a fresh order.

6. We hereby made it clear that till then the *status quo* shall be maintained in respect of the petition schedule property.

7. We hereby made it clear that the decision shall be taken by the Court below within two months from the date of receipt of a copy of this order.

8. Accordingly, the Civil Miscellaneous Appeal is disposed of. No order as to costs.

9. Miscellaneous petitions, if any, pending shall stand closed.

10. Copy of this order be send to the Court below immediately.

JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

17th February, 2017

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