

THE HON'BLE SRI JUSTICE S.V.BHATT
CIVIL REVISION PETITION Nos.
3796, 3884, 3919, 3920, 3932 and 3950 of 2016

COMMON ORDER:

Heard Mr.B.Vijaya Bhaskar for petitioners, Mr.A.M.Qureshi for first respondent and Mr.Saleem for respondent Nos.2 and 3. The reference to details in C.R.P.No.3796 of 2016, is sufficient for disposal of all the C.R.Ps.

2. The petitioners in I.A.No.438 of 2013, who are third parties to the *//s* in O.S.No.249 of 2012 in the Court of Principal Junior Civil Judge, Adoni are the revision petitioners.

3. The first respondent filed O.S.No.249 of 2012 for perpetual injunction restraining respondent Nos.2 and 3 herein, their men, agents etc., from interfering with peaceful possession and enjoyment of the plaint schedule property. The plaint schedule consists of door No.21-138, for further description it is shown as behind Nirmala theatre. The second respondent is contesting the suit. While matter stood thus, the revision petitioners filed I.A.No.438 of 2013 under Order I Rule 8-A C.P.C. to implead them as defendant Nos.3 and 4 in O.S.No.249 of 2012. The first respondent stoutly opposed the application of petitioners to come on record as defendant Nos.3 and 4. Respondent Nos.2 and 3 opposed the prayer of the petitioners to come on record, however, gone on record by alleging that the plaint schedule belongs to Government, respondent Nos.2 and 3, being custodians, are taking steps to prevent further encroachments and have taken several steps and measures in this behalf. Respondent Nos.2 and 3 denied the allegations made against them. It is further stated in counter-affidavit that after the suit is disposed of, the

interim orders vacated, for eviction steps will be taken up for removal of the structures in the plaint schedule property.

4. The trial Court has examined the prayer of the petitioners to come on record, more than what is required, on the ground that Rule 8-A of Order I C.P.C. is not applicable to the case on hand, dismissed the application.

5. Mr.Saleem, on instructions from respondent Nos.2 and 3, submits that what is required to be stated either in the written statement or counter-affidavit is not stated by respondent Nos.2 and 3, and his clients intend to take steps for placing on record such other plea or evidence as is warranted in the facts and circumstances of this case to assert that the petition land is Government land. Now the assertion of respondent Nos. 2 and 3 is substantially supporting the grievance of the revision petitioners, viz., what ought to have been pursued and taken up by respondent Nos.2 and 3 was not done by respondents while filing the written statement. The consideration of a legal issue under Rule 8-A of Order I C.P.C. is so much dependent upon the nature of right either the plaintiffs or defence of defendants in the suit.

6. The learned counsel, having regard to the statement of respondent Nos.2 and 3, submit that a few findings on the plaint schedule are erroneously recorded by the trial Court, the order under revision can be set aside, I.A. restored to file and remanded for disposal afresh in accordance with law.

7. Statement placed on record. Order impugned in the revision set aside, I.A. restored to file and remanded to trial Court for disposal afresh

in accordance with law. The statement of Mr.Saleem that respondent Nos.2 and 3 will take steps expeditiously is placed on record. The C.R.P. is allowed.

8. In view of the order in C.R.P.No.3796 of 2016, learned counsel appearing for the parties submit that without referring to details and reference, the orders under challenge in revisions be set aside, I.As. restored to file and remanded to trial Court for disposal afresh in accordance with law. These C.R.Ps. are allowed and remanded to trial Court.

9. As a sequel to allowing the C.R.Ps., miscellaneous applications filed and pending therein shall stand disposed of as infructuous.

S.V.BHATT, J

03rd February, 2017
GHN

