

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

CIVIL REVISION PETITION No.851 of 2017

ORDER :

This Revision is filed by petitioner challenging the order dt.07-02-2017 in I.A.No.69 of 2017 in C.M.A.No.1 of 2017 of the II Additional District Court, West Godavari, Eluru.

2. Petitioners herein are defendants. Respondent Nos.1 and 2 herein filed O.S.No.234 of 2016 on the file of the Senior Civil Judge, Tadepalligudem for declaration of their title for 2/3rd joint share in the plaint schedule property, for cancellation of registered sale deed dt.13-04-2016 executed by 3rd respondent herein in favour of petitioners and for a permanent injunction restraining petitioners and 3rd respondent from altering the plaint schedule property.

3. Pending suit, they filed I.A.No.1711 of 2016 under Order 39 Rules 1 and 2 C.P.C. for a temporary injunction restraining the petitioners and 3rd respondent from altering the shopping complex in the suit schedule property till disposal of the suit.

4. On 14-12-2016, *ad interim* injunction was granted by the trial Court against petitioners and 3rd respondent.

5. Petitioners then filed C.M.A.No.1 of 2017 before the II Additional District Court, West Godavari, Eluru. They filed I.A.No.69 of 2017 in the said C.M.A. seeking stay of the order passed by the trial Court on 14-12-2016 in I.A.No.1711 of 2016.

6. On 20-01-2017, the II Additional District Court, West Godavari, Eluru granted stay till 06-02-2017. On 06-02-2017, the stay was extended upto 07-02-2017. On 07-02-2017, both sides counsel reported ready and also stated that they were putting forth arguments in the main C.M.A. itself. In view of the said submission, the II Additional District Court, West Godavari, Eluru dismissed the stay application I.A.No.69 of 2017 and directed posting of the main C.M.A. on 13-02-2017.

7. Aggrieved by the same, this Revision is filed.

8. Learned counsel for petitioners contended that once stay had been granted on 20-01-2017 and was extended on 06-02-2017, on the pretext that C.M.A. itself can be decided, the stay application cannot be dismissed, and that it was the duty of the II Additional District Court, West Godavari, Eluru to continue the stay till the C.M.A. is heard and disposed of. He further contended that the II Additional District Court, West Godavari, Eluru cannot render the appeal infructuous by dismissing the stay petition and that the C.M.A. is still pending disposal.

9. Notice was ordered to respondent Nos.1 and 2, and the same has been served and Sri S. Subba Reddy, learned counsel had entered appearance on their behalf. Notice to 3rd respondent has been served and U.S.R. No.1512 of 2017 has been filed on 07-03-2017.

10. Though learned counsel for respondent Nos.1 and 2 sought to contend that petitioners ought to have filed a counter in I.A.No.1711

of 2016 in O.S.No.234 of 2016 or filed an application therein to vacate the *ad interim* injunction granted, and that the appeal is not maintainable, I am unable to agree with the said submission. Under Order 43 Rule 1(r) of C.P.C. orders of ad interim injunctions are also appealable and therefore the C.M.A. was maintainable.

11. That apart, there is no valid reason why the stay application should have been dismissed by the II Additional District Court, West Godavari, Eluru when both parties reported ready in the main C.M.A. and in the interest of justice, the said Court ought to have continued the stay and decided the C.M.A. expeditiously.

12. Therefore, the order dt.07-02-2017 in I.A.No.69 of 2017 in C.M.A.No.1 of 2017 of the II Additional District Court, West Godavari, Eluru is set aside and the stay order granted by the said Court in I.A.No.69 of 2017 on 20-01-2017 shall continue till disposal of C.M.A.No.1 of 2017. The said Court shall decide the main C.M.A. on or before 30-06-2017 after hearing counsel on both sides.

13. The Civil Revision Petition is allowed accordingly. No costs.

14. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 07-04-2017

Vsv