

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2167 OF 2017

DATED : 12.06.2017

Between :

Madugula Papi Reddy S/o.Sammi Reddy,
Aged 44 yrs, Occu : Business,
R/o.Parkal Villalge & Mandal,
Warangal District.

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Petitioner

And

Chitti Reddy Sammakka W/o.Late Pulla Reddy,
Aged 75 yrs, Occu : Nil,
R/o.Opp:H.No.3-4-545, Near Pochamma Temple,
Amrutha Talkies, Enugulagadda, Hanamkonda,
Warangal District & others.

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Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

This revision is filed challenging the order in C.M.A.No.72 of 2015 dated 04.02.2016 on the file of II Additional District Judge, Warangal. The said CMA was filed challenging the order in I.A.No.365 of 2015 in O.S.No.275 of 2015 on the file of I-Additional Senior Civil Judge, Warangal dated 17.11.2015.

2. I.A.No.365 of 2015 was filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, seeking temporary injunction in favour of the petitioner/appellant/plaintiff.

3. On exhaustive consideration of the rival submissions, the first appellate Court held that the petitioner/plaintiff is not entitled to temporary injunction. It is suffice to note the observations of the first appellate Court in Para 29 which reads as under :

“Lastly, with respect to actual possession, the counsel for respondents contended that the appellant is not in possession of the suit property and that the same can be ascertained by appointing an Advocate commissioner to visit the premises and report the truth about possession of the appellant. The counsel for the appellant did not respond to this challenge posed by the counsel for respondents. The vacating of premises by the appellant is not pleaded by the respondents. However, this is a unique case wherein the respondent No.1 who is the true owner of the property was at the receiving end injustice done by both her son Chittireddy Narsimha Reddy and the appellant. The respondent No.1 as per photographs filed with memo dt.23.12.2015 got the appellant evicted by resorting to unconventional means by causing public embarrassment to the appellant. Therefore, the appellant could not take any steps against respondent No.1. The circumstances of the case give rise to serious doubt about appellant’s possession over suit property. While things stood thus, the appellant approached the court by suppressing material facts with an ill motive to reenter the suit

premises by using law as sword and armour. This would be nothing but abuse of due process of law. Therefore, I am of the opinion that the conduct of the appellant does not entitle him to seek equitable relief of temporary injunction.”

4. This finding recorded by the first appellate Court would clearly show that the petitioner was not in possession even by the time the CMA was finally disposed of. This revision is filed after more than one year from the date of order. Though learned counsel for the petitioner also sought to contend that petitioner is in possession and without following the due process, he cannot be thrown out of the property, the findings recorded by the first appellate Court in Para 29 would clearly show that petitioner is not in possession.

5. Learned counsel for the petitioner also sought to contend that an Advocate Commissioner be appointed to ascertain the possession of the petitioner. As seen from the order extracted above, this suggestion was made by the respondents in the said CMA. But, the petitioner did not agree for appointment of Advocate Commissioner. Therefore, on the material available on record, the order was passed by the first appellate Court. Having not utilized the opportunity afforded to him by the first appellate Court and having regard to the fact that this revision is filed after more than one year of the order of the first appellate Court, this Court is not inclined to accept the said request of the petitioner at this stage.

6. The order under revision is a well considered order and I do not see any error in the decision arrived at by the first appellate Court affirming the decision of the trial Court, warranting interference by this Court.

7. Accordingly, the Civil Revision Petition is dismissed. It is needless to observe that the findings recorded in CMA.No.72 of 2015 arising out of I.A.No.365 of 2015 is only for the purpose of decision in the interlocutory application and cannot have bearing on the merits of the suit. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Revision shall stand closed.

P.NAVEEN RAO,J

12th June, 2017
Rds

