

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.205 OF 2017

ORDER:

The present Civil Revision Petition is filed, under Article 227 of the Constitution of India, aggrieved over the order, dated 18.11.2016 passed by the learned Principal District Judge, Adilabad in C.M.A. No.5 of 2016, confirming the order dated 12.04.2016 passed by the learned Junior Civil Judge, Adilabad in I.A. No.133 of 2015 in O.S. No.111 of 2015.

2. The petitioner herein is defendant and the respondents are plaintiffs in the aforesaid suit.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the suit.

4. Heard Sri A. Nagendra Rao, learned counsel for the defendant - revision petitioner.

5. A few facts, which are relevant for the purpose of disposal of the present revision require advertence.

(a) The plaintiffs filed the suit in O.S. No.111 of 2015 on the file of Junior Civil Judge, Adilabad. They also made an application in I.A. No.133 of 2015 for grant of ad-interim injunction restraining the defendant from interfering with their possession over the schedule property. On counter being filed and having heard both sides,

considering Exs.A-1 to A-10 on behalf of the plaintiffs and Exs.B-1 to B-33 on behalf of the defendant, the learned trial Judge allowed the interlocutory application granting temporary injunction till disposal of the suit. The aforesaid decretal order was challenged by preferring C.M.A. No.5 of 2016 on the file of Principal District Judge, Adilabad. The learned Principal District Judge, by the order dated 18.11.2016, confirmed the order passed by the trial Court having satisfied that the plaintiffs established *prima facie* title and possession over the subject property.

6. The learned counsel for the defendant (revision petitioner) would submit that Exs.B-31 and B-32 would reflect that the suit land, which is Ac.0-30 guntas, said to have gifted under Ex.A-5 by plaintiff No.1 in favour of plaintiff No.2 is invalid and no possession could have been delivered for the reason that the said extent along with remaining extent of Acs.6.28 guntas in Survey No.84 was mortgaged under document No.179/98, that the mortgage deed was executed in the year 1998 and it was only released under Ex.B-32 on 11.09.2008. It is, therefore, his submission that the gift settlement deed said to have executed on 24.07.2008, was during the period, the suit extent along with other extents were under mortgage covered by Ex.B-31. The learned counsel would submit that none of the two Courts did examine this aspect of the case and if this aspect was probed into by either Court, certainly, a different view would have taken by the Courts below.

7. A perusal of the order passed by the trial Court and the lower appellate Court would show that this aspect was left untouched. Perhaps, the learned counsel on record before either Court, did not canvass on this point.

8. The question is whether the mortgage under Ex.B-31 with possession or otherwise, requires probe on factual side. In such an event, it would be proper and appropriate to direct the learned trial Court to dispose of the suit itself by fixing a timeline.

9. Since both the Courts below succinctly held against the defendant, it would be appropriate to direct the learned trial Court to dispose of the suit itself as expeditiously as possible preferably within a period of one year from the date of receipt of a copy of the order.

10. Accordingly, the Civil Revision Petition is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Revision Petition stand closed.

A. SHANKAR NARAYANA, J

April 21, 2017.
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