

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.3099 of 2012

ORDER:

Heard the learned counsel for the petitioner Sri A.Ravi Shankar and Sri A.Bheema Rao, learned counsel for respondent No.1.

2. This revision, filed under Article 227 of the Constitution of India, challenges the order dated 13.02.2012 passed by the Court of the Junior Civil Judge, Tekkali, Srikakularm District.

3. Plaintiff in O.S.No.37 of 2003 is the revision petitioner. Petitioner herein instituted O.S.No.37 of 2003 against the respondents herein for declaration that she got a right of passage over the plaint schedule site and for consequential recovery of possession of the plaint schedule site, for mandatory and permanent injunction and for damages and for costs. In the said suit, the petitioner filed I.A.No.144 of 2011 under Section 10 read with Section 151 of the Code of Civil Procedure praying the Court below to grant stay of the trial of the suit till the disposal of the Second Appeal No.75 of 2010 before this Court. The learned Junior Civil Judge, Takkali passed an order on 13.02.2012, dismissing the said I.A.No.144 of 2012. This revision challenges the validity and the legal sustainability of the said order.

4. According to the learned counsel for the petitioner the order under challenge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Section 10 of the Code of Civil Procedure. It is further submitted that the Court below grossly erred in refusing to

consider the request of the petitioner herein for staying the suit in view of the pendency of the second appeal before this Court.

5. On the other hand, it is submitted by the learned counsel for the first respondent that there is no jurisdictional error nor there is any infirmity in the impugned order and in the absence of the same, the impugned order is not amenable for any interference of this Court under Article 227 of the Constitution of India. It is further submitted that the subject properties in O.S.No.37 of 2003 and in O.S.No.63 of 1991 are different and distinct as such the Court below rightly dismissed the application filed by the petitioner herein.

6. In the above background, now the issues that arise for consideration of this Court is_ “Whether the impugned order passed by the Court below warrants any correction by this Court under Article 227 of the Constitution of India?”.

7. According to the petitioner, the plaint schedule property is a pathway to the subject matter of the suit in O.S.No.63 of 1991 and this Court ceased of the matter in Second Appeal 75 of 2010 and as such the Court below ought to have considered the application. In the counter filed by the respondents/defendants, it was categorically stated that the properties in the present suit and in O.S.No.63 of 1991 are different and distinct.

8. In the order under challenge, the learned Junior Civil Judge, Tekkali, categorically recorded a finding that the petitioner herein did not file any judgment or reference to O.S.No.63 of 1991 to ascertain the documentary basis on which the said suit was instituted. The Court below also assigned cogent and convincing reasons for rejecting the request of the petitioner herein. It is a settled and well established principle of law that unless the

order suffers from jurisdictional error, the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is not permissible.

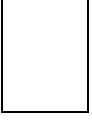
9. For the aforesaid reasons, this Court does not find any valid reason to meddle with the orders passed by the Court below. Accordingly, the revision is dismissed. Miscellaneous petitions, if any pending, in this civil revision petition shall stand closed. No order as to costs.

A.V.SESHA SAI, J

Date: 31.08.2017

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