

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

CIVIL MISCELLANEOUS APPEAL No.401 of 2017

JUDGMENT: (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellants assail the order dated 17.04.2017 passed in I.A.No.380 of 2017 in O.S.No.394 of 2017 on the file of the XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B.Nagar.

2. The aforesaid I.A., was filed by the respondents-plaintiffs under Order 39 Rules 1 and 2 CPC seeking ad interim injunction restraining the appellants herein from changing the nature of the petition 'A', B1 to B4 schedule properties, pending disposal of the suit.

3. The learned XIV Additional District and Sessions Judge, after considering the application, recorded in the order dated 17.04.2017 that, originally, the respondents-plaintiffs filed the suit for declaration and recovery of possession in respect of the schedule properties. Accordingly, after perusing the plaint, certified copy of the sale deed documents, copy of patta pass books, rectification deeds, copy of pahani, certified copy of orders of the Revenue Divisional Officer, Chevella Division, Memorandum of Title Deed, Development Agreement, Encumbrance Certificates of the property, letter addressed to the Commissioner, HMDA and the statement of the learned counsel for the respondents-plaintiffs, the learned Judge opined that if interim order was not granted, purpose of filing of the suit would fail.

4. Accordingly, in view of the urgency expressed by the respondents-plaintiffs, the learned Judge dispensed with notice to the appellants and opined that prima facie case and balance of convenience was found in favour of the respondents-plaintiffs at that stage. Accordingly, the learned Judge granted ad interim injunction restraining the appellants from changing the nature of the petition schedule properties till 28.04.2017.

5. We note, instead of approaching the Court below by filing reply and taking an order from the Court in I.A.No.380 of 2017, appellants have approached this Court. Though the appellants have a statutory right to approach this Court against the order passed by the Court below, however, as ad interim injunction is till 28.04.2017, in our considered opinion, interests of justice would be met if the appellants are directed to file counter-affidavit in I.A.No.380 of 2017.

6. Accordingly, appellants shall file counter-affidavit in I.A.No.380 of 2017 before the Court below by 28.04.2017. Thereupon, the Court below, after considering the counter-affidavit and by giving opportunities to both sides, shall take a final decision on I.A.No.380 of 2017 on or before 30.05.2017.

7. The appeal is accordingly disposed of. No order as to costs.

As a sequel, miscellaneous petitions if any pending stand closed.

SURESH KUMAR KAIT, J

GUDISEVA SHYAM PRASAD, J

April 27, 2017
MRR