

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.4462 of 2017

ORDER:

The Civil Revision Petition is filed by the petitioner/appellant aggrieved by the order dated 30.08.2017 in I.A.No. 237 of 2017 in A.S.No. 7 of 2017 passed by the Senior Civil Judge, Narayanpet, wherein the learned Judge dismissed the petition filed by the petitioner/appellant under Order 41 Rule 5 read with 151 CPC seeking stay of execution of the decree till the disposal of the appeal.

2. A.S.No. 7 of 2017 was filed against the decree and judgment in O.S.No. 41 of 2006 on the file of Junior Civil Judge, Kodangal. The said suit was filed by the respondent/plaintiff seeking declaration in respect of Ac. 4.24 gts in S.No. 407 situated at Kankurthy Village, Damaragidda Mandal, and for possession after eviction of the appellant/defendant and also for recording the name of the plaintiff as pattedar in ROR by deleting the name of the defendant. The said suit after contest was decreed in favour of the plaintiff on 14.7.2017. Aggrieved, A.S.No. 7 of 2017 was filed by the appellant/defendant. In I.A.No.237 of 2017, the appellant sought for stay of execution of the decree and the said petition was dismissed by the appellate Court observing that as per the proceedings

No. C/2943/2015, the name of respondent/plaintiff is mutated in the revenue record on 11.8.2017. As per the contention of the respondent/plaintiff, after said mutation, the appellant/defendant left the suit schedule property and the appellant did not file any evidence to show that he raised red gram crop in the suit land. Ultimately, the said petition was dismissed. Thus, it would appear that the appellate Court declined to grant stay on the ground that the appellant did not produce any record to show his possession of the suit property.

3. Heard.

4. The point for determination is whether there are any merits in the Civil Revision Petition to allow?

POINT:

5. Admittedly, the suit is one for declaration and recovery of possession of suit property. By nature of the prayer sought for in the suit, it can be said that the respondent/plaintiff was out of possession of the suit property and that is why he sought for recovery of possession. In view of the matter, the appellate Court without going into the merits as to whether the appellant had left the property after the decree or not, ought to have stayed the execution of the decree. Whether the appellant left the property or not is a separate aspect of the matter that could have been

gone into at the time of hearing the main appeal. The appellate Court gave much undue importance to the allegation of the respondent/plaintiff that after decree the appellant left the suit schedule property. This aspect is not genuine for deciding the said petition since it is an eviction decree, unless the same is stayed pending appeal, the valuable rights of the appellant/defendant which are at stake will be jeopardized if he is evicted pending appeal.

6. Considering the same, the Civil Revision Petition is allowed and the impugned order dated 30.8.2017 is set aside and consequently I.A.No. 237 of 2017 is allowed and decree and judgment in O.S.No. 41 of 2016 on the file of Junior Civil Judge, Kodangal, Mahabubnagar District, is stayed pending disposal of the appeal. There shall be no order as to costs. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 09.11.2017
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