

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.6688 of 2017

ORDER:

Heard both sides.

2) Perused the grounds urged in the revision and the impugned order dated 15.09.2017 passed in I.A. No.1256 of 2017 in A.S. No.253 of 2017, by the XI Additional Chief Judge, City Civil Court, Hyderabad.

3) The appeal in A.S. No.253 of 2017 was maintained by the defendants in O.S. No.416 of 2009 against the trial Court decree granting permanent prohibitory injunction in favour of the sole plaintiff. Undisputedly, the appellant No.3 herein is the plaintiff, who filed O.S. No.3874 of 2008, which was also a suit for bare injunction (prohibitory) and both the suits are in respect of the self same property i.e., 125 Sq.yds site pursuant to the registered gift deed bearing document No.610 of 1967 dated 14.03.1967. The finding of the trial Court in dismissing the suit, from the contest by the defendants, is that in the so-called gift deed there is no extent of the site mentioned, much less to say, they got any vacant site covered by the plaint schedule property beyond their house property, leave about, the western boundary from the very document describes. It is with its observations that suit was ended in dismissal and aggrieved by the same, the 3rd defendant herein filed A.S. No.76 of 2011 and the present

appeal i.e., A.S. No.253 of 2017 is filed by aggrieved defendants herein of the decree in O.S. No.416 of 2009 and they did not obtain the interim injunction pending disposal of appeal. In the appeal filed against the decree dated 18.08.2017, passed in O.S. No.416 of 2009 dated 18.08.2017 as A.S. No.253 of 2017, they filed I.A. No.1256 of 2017 to suspend the operation of the said judgment. The suspension of operation in fact will not give any right to them but for if at all to rely upon the so-called finding of the trial Court in O.S. No.416 of 2009 in para No.11 which reads as follows:

“It is manifestly discernible from the aforesaid material on record, though PW.1 in his cross examination has admitted that the defendants are using the disputed extent of 125 Sq.yds for times immemorial which is on the south eastern of their property leading to the entrance but Ex.A1 shows that the father of the plaintiff was the owner of the said extent of property. Further more, the defendants have not filed any documentary proof to demonstrate their ownership over the disputed 125 Sq.yds lands and the suit filed by them in O.S. No.3874/2008 was dismissed on 20.12.2010 under Ex.A6 which is the certified copy of the judgment by holding that the 3rd defendant has failed to establish his title and possession over the 125 Sq.yds of the land. Though DW.1 claimed that they have filed an appeal in A.S. No.76 of 2011 against the Judgment in Ex.A6 which is pending on the file of II Additional Chief Judge, City Civil Court, Hyderabad, but there is no material on record to demonstrate that the operation of the Judgment under Ex.A6 is either stayed or suspended. Moreover, the documents filed by the defendants through DW1 under Ex.B1 to B6 did not specifically

establish their right and title in respect of the disputed extent of 125 Sq.yds of land and admittedly, the defendants are not claiming the entire Suit Schedule Property. Further, though D.W.1 claimed that Smt.Dondu Bai gifted an extent of 4137 Sq.feets in his favour under Ex.B1, but there is no mention of the extent of the schedule property under Ex.B1 Gift Deed as admitted by DW.1 in his cross examination and therefore, it cannot be accepted the contention of the defendants that the plaintiff is trying to illegally encroach into the property of the defendants that the plaintiff is trying to illegally encroach into the property of the defendants which is the disputed extent of 125 Sq.yds. (sic 3rd defendant herein).”

4) Once such is the case, the user of the site is whether if not as owner only otherwise either with permissive possession or any right of easement. No doubt, there is alternative plea taken by the defendants in the first plea as owners and in the alternative second plea as right of easement. It is a matter ultimately to be decided in both the appeals, in view of the fact that one appeal is pending from 2011 and the other from very recently, and it is not even the case of the plaintiff in O.S. No.416 of 2009 that all of a sudden he is going to make any construction, the order passed the lower appellate Court in suspending the operation shall be in force for six months from today. In the meantime, by virtue of this order, learned XI Additional Chief Judge, City Civil Court, Hyderabad is directed to transfer A.S. No.253 of 2017 to decide along with A.S. No.76 of 2011 pending on the file of II Additional Chief Judge, City Civil Court, Hyderabad.

5) The observation of this Court herein and the order of the lower appellate Court in suspending the operation of the decree in O.S. No.416 of 2009, no way create any right in favour of the appellants in A.S. No.253 of 2017 and the appellants in A.S. No.76 of 2011 but for deciding the appeals on its own merits.

6) Accordingly, the Civil Revision Petition is disposed of.

7) Consequently, miscellaneous petitions, if any pending in this revision shall stand closed. There shall be no order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.11.2017
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HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.6688 of 2017



Date:30.11.2017

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