

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.1295 OF 2017

JUDGMENT:

Heard both sides at length and perused the grounds urged in the appeal and the impugned order of the lower Court in I.A.No.529 of 2015 dated 09.10.2017 in A.S.No.126 of 2015.

A.S.No.126 of 2015 is maintained by the unsuccessful plaintiff in the suit for declaration of title over the plaint schedule property with consequential permanent injunction restraining the defendant from interfering with plaintiff's possession and enjoyment of the plaint 'B' schedule property, aggrieved by dismissal judgment in O.S.No.335 of 2012 dated 27.07.2015. Pending disposal of the said A.S., he sought for temporary injunction in I.A.No.529 of 2015, since ended in dismissal, maintained this CMA against the dismissal of the injunction order.

No doubt, as pointed out by the learned counsel for the appellant/plaintiff, para 20 of the trial Court's judgment with reference to the evidence mentioned that report of the advocate commissioner shows the measurements of plaint 'B' schedule property and commissioner report categorically establishes the plaint 'B' schedule property. What is further observed is that measurement of plaint 'A' schedule property and house of defendant not mentioned, in not considering the report of the advocate commissioner by the trial Court. Whereas, pending appeal, in the injunction petition, seeking temporary injunction against the defendant not to interfere with the plaint 'B' schedule vacant site, the lower appellate Court, in dismissal

of the temporary injunction, observed wrongly, as if plaintiff got failed to get his property localized.

Whereas, the submission of the learned counsel for the respondent/ defendant herein is that the very order at para-13 clearly speaks admissions of the plaintiff in Ex.A4 and Ex.B3 caveat of there is a vacant site of the defendant on the north of the plaintiff's property and thereby, there is nothing to interfere with the plaint 'B' schedule property, which is part of the subject matter covered by the Lok Adalat award under Ex.B1 in O.S.No.900 of 2005 dated 16.07.2005, is no doubt a matter of appreciation also.

Having regard to the above, the C.M.A is disposed of by directing both the parties so far as plaint 'B' schedule property vacant site is concerned, to maintain existing *status quo* and the lower appellate Court is directed to dispose of A.S.No.126 of 2015 as early as possible, as to other preferences at any cost within a period of six months from the date of receipt of copy of this order.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date:26-12-2017

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