

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**C.R.P.No.2975 OF 2017**

**ORDER:**

This revision petition is filed under Article 227 of the Constitution of India challenging the order and decree dated 24.04.2107 in C.M.A.No.8 of 2017 passed by the IV Additional District Judge, Visakhapatnam setting aside the order dated 02.01.2017 in I.A.No.180 of 2016 in O.S.No.336 of 2016, granting interim injunction restraining petitioners herein from proceeding with further construction in B Schedule property, reversed the order passed by the II Additional Junior Civil Judge, Visakhapatnam.

The respondent filed suit i.e. O.S.No.336 of 2016 for grant of perpetual injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the property and also filed I.A.No.180 of 2016 under Order 39 Rules 1 and 2 of the Code of Civil Procedure to grant temporary injunction during pendency of the suit restraining the petitioners from interfering with the peaceful possession and enjoyment of the property asserting that the he is the absolute owner of the property having joint interest and alleged that the petitioners herein are trying to interfere with the peaceful possession and enjoyment of the property and raising constructions therein.

The petitioners herein filed counter claim to restrain the respondent from interfering with the construction work being carried on in the schedule property and also filed I.A.No.216 of 2016 in O.S.No.336 of 2016 under Order 39 Rules 1 and 2 C.P.C. to grant interim injunction restraining the respondent herein from interfering with the construction work during pendency of counter claim. Initially, the trial Court granted interim injunction in favour of the respondent and upon hearing, vacated the interim injunction while granting interim injunction in favour of the

petitioners restraining the respondent from interfering with the construction work going on in the schedule premises. Aggrieved by the order dated 02.01.2017 in I.A.No.180 of 2016 in O.S.No.336 of 2016 and I.A.No.216 of 2016 the respondent filed C.M.A. Nos.8 and 9 of 2017, but C.M.A.No.9 of 2017 is pending before IV Additional District Judge, Visakhapatnam. For one reason or the other, IV Additional District Judge, Visakhapatnam disposed of C.M.A.No.8 of 2017, which is under challenge, while keeping C.M.A.No.9 of 2017 pending for disposal.

Undisputedly, the suit and the counter claim are one and the same i.e. injunctive relief against one another the claim pertains to same property. The trial Court initially granted interim injunction in favour of the respondent in I.A.No.180 of 2016 and later on contest the application filed by the plaintiff and defendants were decided by separate order and the interim order granted in I.A.No.180 of 2016 in favour of the respondent was vacated and granted interim injunction in favour of the petitioners allowing I.A.No.216 of 2016.

Though, two separate appeals were filed by the respondent herein before the IV Additional District Judge, Visakhapatnam for one reason or the other, the District Judge disposed of C.M.A.No.8 of 2017 setting aside the order dated 02.01.2017 passed in I.A.No.180 of 2016 by the II Additional Junior Civil Judge, Visakhapatnam and granted interim injunction in favour of the respondent restraining the petitioners from making construction, where as the interim order granted by the II Additional Junior Civil Judge is still subsisting it is the subject matter of C.M.A.No.9 of 2017.

On the other hand in para 18 of the impugned order the District Judge discussed about validity of the electricity bills, building plan approval and other documentary evidence produced by the petitioners

herein, who are respondents in C.M.A.No.9 of 2017 and recorded a finding. The finding recorded in C.M.A.No.8 of 2017, will have its impact on C.M.A.No.9 of 2017 since those documents were also relied on by the respondent in C.M.A.No.9 of 2017. The order under impugned is amounting to deciding the appeals of 2017 pending before it, indirectly. Adopting such course of disposal, keeping other appeal pending may lead to serious suspicion and consequences in view of granting injunction in favour of the respondent while allowing the interim injunction subsisting in favour of the petitioners herein. Therefore, the way in which the District disposing of C.M.A.No.8 of 2017, keeping the other appeal pending is illegal and contrary to the practice and procedure. Therefore, the impugned order is liable to be set aside.

Two interim orders are subsisting one against other as on today. Granting interim injunction in favour of the respondent restraining the petitioners from proceeding with the construction work and while allowing interim injunction in favour of the petitioners, to continue, which is subject matter of C.M.A.No.9 of 2017, is a serious irregularity committed by the District Judge. Therefore, by exercising power under Order 41 Rule 25-A C.P.C., I find that it is a fit case to remand the matter to the District for fresh disposal along with C.M.A.No.9 of 2017.

Accordingly, the civil revision petition is allowed setting aside the order dated 24.04.2017 in C.M.A.No.8 of 2017 passed by the IV Additional District Judge, Visakhapatnam. However, the matter is remanded to the District Judge with a direction to dispose of C.M.A.Nos8 and 9 of 2017 simultaneously as the subject matter of the appeals are one and the same in accordance with law after affording reasonable opportunity to both parties and advert to the contentions raised both in the appeals and answer such relevant contentions in accordance with law within six weeks

from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

**JUSTICE M. SATYANARAYANA MURTHY**

19.01.2018

Note: Issue c.c. by 22.01.2018

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