

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.3553 of 2018

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“.....to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in interfering with petitioner's possession and enjoying of the tin roofed house bearing door no.8-16 (8-18) situated in an extent of 240 Sq.yards in Sy.No.185/ 6 of Tatipaka Village, Razole Mandal, E.G.Edistrict and making efforts to dispossess him from the said house as illegal, arbitrary, violative of Art.19 and 300-A of the Constitution of India and consequently direct the 2nd respondent not to dispossess him from the said land and pass such ...”

2. Heard the learned counsel for the petitioner, the learned Government Pleader for Endowments appearing for respondent No.1 and Smt.K.Lalitha, learned Standing Counsel, who offers to file vakalat for respondent No.2 and perused the grounds urged in the writ petition with supporting affidavit and other material on record.

3. Undisputedly, from the enclosures of the writ petition covered by Ac.0.18 cents in R.S.No.185/ 6 of Tatipaka Village, Razole Mandal, East Godavari District, there is a decree in O.S.No.119 of 2010 dated 26.09.2016 obtained by respondent No.2- Sri Visweswara Swamyvaari Temple herein, as plaintiff/decree holder, against four defendants, viz., Geddamm China Arjunarao, Geddamm Murali Krishna, Geddamm Padma Gowri Venkata Satyanarayana Prasad and Ganta Rani.

4. The only contention herein is that the petitioner is not one of the defendants to the suit, though the property is covered and

the decree is not binding on him. Once such is the case, any claim is left open to raise in the Execution Petition, because, all the defendants even contested, did not say of they are no way concerned and the petitioner is anyway concerned for the present claim as part of the decree schedule concerned, leave about if at all the petitioner purchased from any of the defendants or the late 1st defendant as the case may be, it is equally binding on him as a person claiming through the original defendants, but for, to say, in such an event, the petitioner is entitled to file a third party appeal, if at all aggrieved by the decree of the suit. As the petitioner wants to avail such remedy, one month stay of eviction is granted. In the meantime, the petitioner can invoke the remedy and in the event of filing third party appeal, the question of delay does not arise against the decree and judgment in O.S.No.119 of 2010 and the lower appellate Court concerned shall entertain the same, if he files within fifteen days from the date of receipt of copy of this order without insisting on limitation to accord leave for hearing.

5. Accordingly, this Writ Petition is disposed of.

6. Miscellaneous petitions pending, if any, shall stand closed.

No costs.

Dr. B. SIVA SANKARA RAO, J

Date: 06.02.2018

Note:

Issue C.C. tomorrow.

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