

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4020 of 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 20.07.2017 passed in C.M.A.No.2 of 2017 on the file of the Court of the III Additional District Judge, Asifabad.

2 Heard the learned counsel for both parties.

3 For the sake of convenience, the parties to this Civil Revision Petition will, hereinafter, be referred to as they are arrayed before the trial court.

4 The facts leading to filing of the present Civil Revision Petition, in brief, are as follows:

5 The petitioner filed O.S.No.166 of 2016 on the file of the Court of the Junior Civil Judge, Sirpur-T against the respondent seeking perpetual injunction in respect of the suit schedule property which is an extent of 5 ft. on the West of the house of the petitioner. The petitioner purchased the suit schedule property under a registered sale deed. After purchase of the vacant site, the petitioner constructed a house therein by leaving 5 feet on the West of his house. It is the further case of the petitioner that the respondent, without any manner of right whatsoever, is interfering with the suit schedule property. Along with the suit, the petitioner filed a petition under Order 39 Rules 1 and 2 CPC seeking interim injunction. The respondent filed counter denying all the averments made in the petition, *inter*

alia, contending that the respondent purchased a vacant site and constructed Relax Bar & Restaurant on the Western side of the petitioner's house. It is the further case of the respondent that the petitioner encroached 5 feet and constructed a compound wall. Hence the petition is liable to be dismissed.

6 Before the trial Court, on behalf of the petitioner Exs.P.1 to P.4 were marked. ON behalf of the respondent Exs.R.1 and R.2 were marked.

7 Basing on the material available on record, the trial court arrived at a conclusion that the petitioner established *prima facie* case, balance of convenience in his favour. The trial court made an observation that if no injunction is granted, it may cause untold hardship to the petitioner when compared to the respondent. With the above observations, the trial court granted interim injunction in favour of the petitioner restraining the respondent to interfere with the suit schedule property.

8 Feeling aggrieved by the order dated 14.2.2017 passed in I.A.No.329 of 2016 in O.S.No.166 of 2016, the respondent / defendant preferred C.M.A.No.2 of 2017 on the file of the Court of the III Additional District Judge, Asifabad. The learned III Additional District Judge, Asifabad, after appraising the documentary evidence and other material available on record, arrived at a conclusion that the petitioner failed to prove the *prima facie* case and balance of convenience in his favour and consequently allowed the CMA with some directions. Hence the present Civil Revision Petition.

9 The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order?

10 It is needless to say that a person who seeks interim injunction has to establish the cardinal principles of prima facie, balance of convenience in his / her favour. The petitioner has to establish that if no injunction is granted, it will cause untold hardship to him/her. It is also settled principle of law that a person who seeks equitable relief of injunction has to come to court with clean hands.

11 It is an admitted fact that the petitioner purchased vacant site under a registered sale deed Ex.P.1. A perusal of Ex.P.2 reveals that on 10.12.2014 the petitioner obtained necessary permission from the Municipality, Kaghaznagar to construct the house. Ex.P.3 dated 20.07.2016 and Ex.P.4 dated 02.11.2016 are property tax receipts. A perusal of Ex.R.1 dated 02.02.1994 reveals that the respondent constructed Bar & Restaurant after obtaining permission from the Kaghaznagar Municipality. Ex.R.2 dated 14.8.2003 is the certified copy of registered sale deed in favour of the petitioner.

12 It is not in dispute that the petitioner purchased vacant site under Ex.P.1 sale deed. Petitioner did not choose to file the plan to resolve the dispute involved between the parties. Exs.P.3 and P.4 are no way helpful to the petitioner to establish that he left 5 feet on the West of his house. Ex.P.P.5 approved plan was marked in the CMA. As per the plan, the petitioner left 1.5

meters on East and West. The contention of the petitioner that he left 5 feet on the West of his house is negated by Ex.P.5 proceedings. As per Ex.P.5 proceedings, the petitioner constructed the house to the extent of 39 feet. If 5 feet is left, the petitioner ought to have constructed the house within 34 feet only. There is no prima facie material to establish that the petitioner left 5 feet on the West of his house. The trial court has not given any specific finding that the petitioner left 5 feet on the West of his house. This court is unable to understand how the trial court granted interim injunction in favour of the petitioner without giving finding that he left 5 feet on the West of his house. The order passed by the trial court is not sustainable either on facts or in law. On the other hand, the order passed by the appellate court is supported by Ex.P.5 approved plan issued in favour of the petitioner. The petitioner failed to prove prima facie case and balance of convenience are in his favour.

13 Taking into consideration the facts and circumstances of the case, I am of the considered view that the petitioner is not entitled to the relief of interim injunction.

14 At the time of arguments, the learned counsel for the petitioner submitted that the first appellate court, without there being any prayer, suo motu directed the trial court to appoint an Advocate Commissioner to measure the land of both parties. The appellate court ought not to have given direction to the trial court to appoint advocate commissioner. Whether measurement of the property is necessary or not is left to the option of the

parties to the proceedings. If the parties have not come forward for appointment of Advocate Commissioner, there is no need to appoint Advocate Commissioner. Hence the finding of the appellate court to the extent of giving direction to the trial court to appoint Advocate Commissioner is liable to be set aside.

15 In the result, the Civil Revision Petition is allowed in part, setting aside the order dated 20.07.2017 passed in C.M.A.No.2 of 2017 on the file of the Court of the III Additional District Judge, Asifabad to the extent of giving direction to the trial court to appoint an Advocate Commissioner. Whereas the remaining part of the findings of the appellate court, are hereby confirmed. Consequently, I.A.No.329 of 2016 in O.S.No.166 of 2016 on the file of the Court of the Junior Civil Judge, Sirpur-T filed by the petitioner under Order 30 Rules 1 and 2 CPC stands dismissed. Since the suit is of the year 2016, the trial court is hereby directed to dispose of the same as expeditiously as possible. No order as to costs. As a sequel miscellaneous petitions if any pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: November 22, 2018

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