

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.M.A.No.376 of 2018

JUDGMENT:

This appeal is filed under Order 43 Rule 1 CPC assailing the orders dated 25.01.2018 passed in I.A.No.1110 of 2017 in O.S.No.791 of 2017 on the file of the Court of I Additional Senior Civil Judge, at Warangal.

2. Heard Sri A.Sudarshan Reddy, learned senior counsel representing Sri Malipeddi Srinivas Reddy, learned counsel for the appellants and Smt Padma, representing Smt. S.A.V.Ratnam, learned counsel for the respondents.

3. A perusal of the record reveals that the first respondent filed O.S.No.791 of 2017 on the file of the Court of I Additional Senior Civil Judge, at Warangal against the petitioners and the second respondent. During pendency of the suit, the first respondent filed I.A.No.1110 of 2017 under Order 39 Rule 1 and 2 read with Section 151 CPC restraining the petitioners not to make any further constructions. The Court below after affording reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. A perusal of the record reveals that the first respondent filed the suit for declaration and delivery of vacant possession to him by demolishing the illegal structures raised by defendants 1 and 2 in the suit schedule property. A perusal

of the record clearly reveals that the petitioners herein constructed ground and first floor in the said property. The left over work is only plastering of ground and first floors. It is not in dispute that even as per the averments made in the plaint, the first respondent is not in possession of the property. Unless and until the Court declares him as owner of the suit schedule property, he is not entitled for recovery of the same. If the petitioners are prevented from plastering the ground and first floor, the building will be damaged in due course of time. Even if the petitioners are permitted to plaster the ground and first floors, no prejudice will be caused to the first respondent in view of the relief sought by him in the main suit. The trial Court without considering the hardship likely to be caused to the petitioners, allowed the petition on assumptions and presumptions. If the order of the Court below is allowed to stand, certainly it would amount to miscarriage of justice.

5. Sri A.Sudarshan Reddy, learned senior counsel representing the learned counsel for the petitioners, assured that the petitioners will not make any constructions over the first floor.

6. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to allow the appeal.

7. In the result, C.M.A. is allowed setting aside the orders dated 25.01.2018 passed in I.A.No.1110 of 2017 in O.S.No.791 of 2017 on the file of the Court of I Additional Senior Civil Judge, at Warangal. Consequently, I.A.No.1110 of 2017 stands dismissed. However, the construction made by the petitioners in respect of the ground and first floors is subject to the outcome of the main suit. As a sequel, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

16th July 2018,
Rns

T.SUNIL CHOWDARY, J

