

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.635 OF 2015

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in C.M.A.No.9 of 2014 dated 19.12.2014 passed by the Judge, Family Court-cum-II Additional District Judge, Vizianagaram, which in-turn was filed against the order passed in I.A.No.950 of 2013 in I.A.No.273 of 2013 dated 21.11.2013 on the file of Principal Civil Judge's Court, Vizianagaram, whereunder, the said petition filed under Order XXXIX Rule 1 C.P.C for grant of temporary injunction was dismissed. Thus, concurrent findings were recorded by the Trial Court and Appellate Court with regard to right of the petitioner to claim temporary injunction under Order XXXIX Rule 1 & 2 C.P.C.

Aggrieved by the said order, the present civil revision petition is filed on the main ground, as to whether the width of the pathway is 9 feet or 6 feet and that the petitioner is allegedly enjoying this property i.e right in the pathway. But, at this stage, learned counsel for the petitioner Sri K. Sarvabhuma Rao requested the Court to issue necessary directions to the Trial Court to dispose of the suit and determine whether width of the lane is 9 feet or 6 feet, based on the material available on record within a specific time frame.

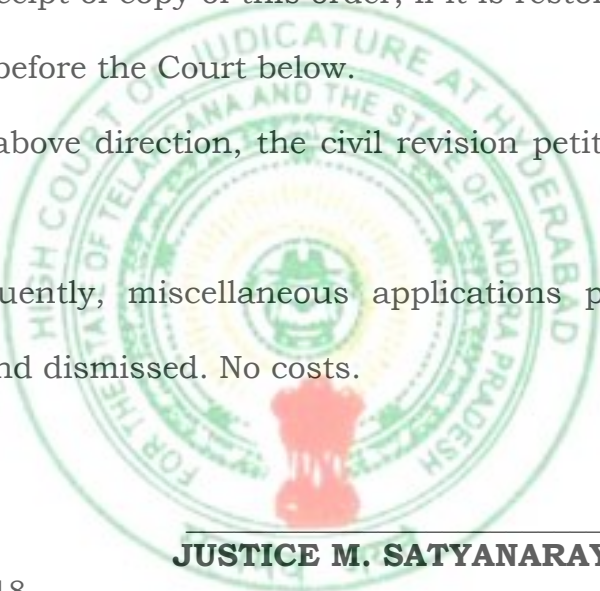
As per the information placed on record by the Registry, O.S.No.273 of 2013 was dismissed for default by the Court below. Learned counsel for the petitioner represented that the petition for restoration of suit is also filed and pending for disposal. If, really,

the suit is pending after its restoration, it is the duty of the Court to decide, the width of the lane, based on evidence available on record at the end of trial, but the court cannot exercise such question while exercising power under Section 227 of the Constitution of India, and it is difficult for this Court to decide the width of the lane, in view of the concurrent fact findings recorded by both the Courts below.

Hence, the Principal Junior Civil Judge at Vizianagaram is directed to dispose of O.S.No.273 of 2013 within six months from the date of receipt of copy of this order, if it is restored, pending for adjudication before the Court below.

In the above direction, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:14.02.2018

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