

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5038 of 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 11.09.2017 passed in I.A.No.601 of 2017 in O.S.No.263 of 2015 on the file of the Court of Principal Junior Civil Judge, Machilipatnam.

2. Heard the learned counsel appearing for both the parties.

3. The facts leading to filing of the present petition are briefly as follows:

The petitioner filed O.S.No.263 of 2015 against the respondents on the file of the Court of Principal Junior Civil Judge, at Machilipatnam for perpetual injunction in respect of the suit schedule property. During pendency of the suit, the petitioner filed I.A.No.772 of 2015 against the respondents under Order 39 Rules 1 and 2 seeking interim injunction. The trial Court allowed the petition and granted interim injunction in favour of the petitioner. On 08.03.2016, the trial Court dismissed I.A.No.772 of 2015 vacating the interim order granted earlier in favour of the petitioner. While things stood thus, the respondents have filed I.A.No.601 of 2017 under Sections 144 and 151 CPC to restore the possession of the suit schedule property in favour of the respondents. The trial Court after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. At the time of arguments, learned counsel for both parties submitted that the main suit is pending before the trial Court.

Learned counsel for both parties in one voice submitted that the trial Court allowed the petition without giving a specific finding on which date, the petitioner dispossessed the respondents from the suit schedule property. Allowing of I.A.No.601 of 2017 without giving specific finding on which date respondents were dispossessed from the suit schedule property is not sustainable either on facts or in law. Both counsel with one voice submitted that the matter may be remanded to the trial Court for fresh disposal.

5. Basing on the material available on record as well as the submissions made by both the counsel, this Court is of a considered view that it is a fit case to remand the matter to the trial Court.

6. In the result, the Civil Revision Petition is allowed setting aside the order dated 11.09.2017 passed in I.A.No.601 of 2017 in O.S.No.263 of 2015 on the file of the Court of Principal Junior Civil Judge, Machilipatnam, and the matter is remanded to the trial Court for fresh disposal. The learned Principal Junior Civil Judge, Machilipatnam, is hereby directed to dispose of I.A.No.601 of 2017 in O.S.No.263 of 2015 afresh, after affording a reasonable opportunity to both the parties, in accordance with law. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:01.10.2018

Rns

