

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.3472 OF 2018

DATED:06-07-2018

Between:

Alla China Appa Rao ... Petitioner

And

Nemala Tatha Rao ... Respondent

COUNSEL FOR THE PETITIONER: Sri Srinivas Emani

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition is filed against order dt.03.05.2018 in I.A. No.97 of 2018 in O.S. No.498 of 2014 on the file of the Principal Junior Civil Judge, Visakhapatnam.

I have heard Mr. Srinivas Emani, learned counsel for the petitioner, and perused the record.

The petitioner filed the above mentioned suit for permanent injunction restraining the respondent from interfering with his possession of the suit schedule property. Subsequently, he has got the said prayer in the suit amended, by seeking a mandatory injunction for removal of the structures raised after filing of the suit. During the midst of the trial, an Advocate Commissioner was appointed for the purpose of physical verification of the suit schedule properties and thereafter the petitioner has filed I.A. No.97 of 2018 to strike off certain issues and add the following issues:

- “1. Whether the defendant is absolute owner of the 14 Sq. yards in ‘ABC’ site shown in the plaint plan?
2. Whether Kotni Venkata Ramanayya executed will in the year 2011 in favour of his adopted son Sri V. Prasada Raju in respect of the “ABC” site shown in the plaint plan?”

The Court below has dismissed the I.A.

The learned counsel for the petitioner submitted that his client is not interested in pressing the civil revision petition to

the extent of dismissal of the I.A. relating to striking off the existing issues. He further submitted that in the light of the plea taken by the respondent – defendant that Kotni Venkata Ramanayya executed a will in the year 2011 in favour of his adopted son, V. Prasada Raju, vendor of the respondent, in respect of “ABC” site, the aforementioned issues have become necessary.

As rightly pointed out by the lower Court, in an injunction simpliciter the question of adjudicating the title would not generally arise. In the instant case, strangely, instead of seeking declaration of his title, wherein the plea of the title of the respondent may also be incidentally gone into, the petitioner sought adjudication of the title of the respondent and that too in a suit for injunction simpliciter filed by him. In my opinion, the petitioner has to succeed on the strength of his own case, rather than on the weakness of the respondent’s case. Even assuming that the defendant has no title, the petitioner cannot succeed in the suit for injunction without establishing his possession and his *prima facie* right to remain in possession.

For the aforementioned reasons, I do not find any merit in this civil revision petition and the same is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, I.A.
No.1 of 2018 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

06-07-2018

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