

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.170 OF 2014

ORDER:-

The revision petition is filed questioning the order, dated 26-11-2013 passed in I.A.No.192 of 2013 in O.S.No.265 of 2013 on the file of the court of Sub Divisional Magistrate, Mobile Court, Bhadrachalam.

2. The grievance of the petitioner is that the suit schedule property in O.S.No.265 of 2013 has fallen to his share in a family partition and that the plaintiff/respondent in the present revision petition gave a sworn affidavit, dated 13-12-2000 in which he clearly stated that the suit schedule property measuring Hc.2.08 = Ac.5.20 cents fell to the share of the revision petitioner. The contention of the learned counsel for the petitioner is that earlier the present revision petitioner filed a suit O.S.No.165 of 2004 before the Sub Divisional Magistrate, Mobile Court, Bhadrachalam. In that suit in I.A.No.30 of 2004 an order was passed on 01-09-2004 restraining the present respondent from interfering with the revision petitioner/plaintiff's possession and enjoyment of the property till the disposal of the original suit. Learned counsel for the petitioner states that the said O.S.No.165 of 2004 is still pending and that the present respondent is also contesting the suit.

Therefore, the learned counsel submits that the present respondent is aware of the earlier injunction order.

3. It is his contention that currently the impugned order was obtained by suppression of material facts. The learned counsel submits that the plaint that is filed in the present suit O.S.No.265 of 2013 does not talk of the earlier interim order that is passed. It is the contention of the learned counsel for the petitioner that by suppression of facts and by playing fraud, the present order was obtained.

4. Notice was ordered to the respondent and despite service of notice, there is no appearance. Office endorsement shows that the respondent is served.

5. This court, after hearing the learned counsel for the petitioner, notices that for the very same suit schedule property there is a dispute in O.S.No.165 of 2014 pending before the Sub Divisional Magistrate, Mobile Court, Bhadrachalam. An interim order was passed in I.A.No.30 of 2004 restraining the present respondent from interfering with the petitioner's peaceful possession and enjoyment. Therefore, a *prima facie* reading of the material papers filed shows that the earlier order is not considered by the court below in passing the subsequent order. The learned counsel also points out that C.R.P No.732 of 2005 was filed by the respondent himself before this court questioning the earlier

order passed in I.A.No.30 of 2004 in O.S.No.165 of 2004. This court directed that the *status quo* existing as on date with regard to operation of the order in I.A.No.30 of 2004 in O.S.No.165 of 2004 should be maintained. The counsel for the revision petitioner points out that it is clear that the respondent has filed the CRP and that he is fully aware of the earlier order. Therefore, it is his grievance that the subsequent order is not sustainable.

6. This court is, therefore, of the opinion that the subsequent order granted in I.A.No.192 of 2013 in O.S.No.265 of 2013 cannot be sustained. The order passed by the lower court in I.A.No.30 of 2004 in O.S.No.165 of 2004, (which according to the learned counsel for the petitioner is still pending) and the subsequent order passed by this court on 25-02-2005 in CRP No.732 of 2005 precludes the court below from passing any further orders with regard to the same property.

7. In that view of the matter, the impugned order, dated 26-11-2013 passed in I.A.No.192 of 2013 in O.S.No.265 of 2013 is set aside. The order of *status quo* granted by this court on 25-02-2005 in CRP No.732 of 2005 still holds good. A contrary order cannot be passed by this court. Therefore, this court also directs that both parties should maintain *status quo* that is existing on 25-02-2005.

8. Further, the court below is directed to dispose of the suit in view of the conflicting claims within a period of six months from the date of receipt of a copy of this order. Needless to say the court should dispose the matter without in any way being influenced by what is stated in this order.

With the above observation, the Civil Revision Petition is disposed of. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

26-11-2018
TSNR



D.V.S.S.SOMAYAJULU,J