

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1098 OF 2018

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.M.Surender Rao, learned senior counsel, holding for Mr.P.S.P.Suresh Kumar, counsel for appellant and Mr.SSharat Kumar, learned Special Government Pleader for Municipal Administration for respondents.

2. The writ petitioner is the appellant. The appellant prays for Mandamus declaring the action of respondents in interfering and trying to construct buildings in an extent of Acs. 01-03 Gts in Sy.Nos.1287/B and 1288/B at Jyothinagar Locality, Karimnagar Town as illegal and violative of Article 300-A of the Constitution of India.

3. The circumstances relevant for disposing of the writ appeal are that one G.A.Prasad Rao and another G.Anantha Rao as Treasurer/Power of Attorney and Secretary of Church of South India, Karimnagar filed O.S.No.531 of 1978 for perpetual injunction restraining the Lions Club, Karimnagar and the City Municipality, Karimnagar from interfering with the possession of plaintiffs therein of an extent of Acs. 01-03 Gts of land in Sy.Nos.1287/B and 1288/B at Karimnagar. On 14.07.1987, O.S.No.531 of 1978 was decreed. According to appellant herein, the said decree has become final. Thereafter, Hiranmai Education System Private Limited, Karimnagar, represented by its Managing Director Donthineni Vinod Kumar, filed O.S.No.130 of 2011 before the Court of III-Additional District Judge,

Karimnagar for declaration of title and perpetual injunction. Municipal Corporation, Karimnagar and the Church of South India Trust Association are arrayed as defendants. On 17.07.2018, O.S.No.130 of 2011 was dismissed and it is contextual to refer to the findings recorded in para 39 of the judgment:

“For all the aforesaid reasons, the Court holds that the plaintiff failed to prove that it is the owner of the suit schedule land. Issue No.1 is answered accordingly.

The Court further holds that the plaintiff failed to prove that it was in lawful possession of the suit property as on the date of suit and that the defendants interfered with the same without rights. Issue No.2 is answered accordingly.

The Court further holds that D.1 proved that the suit land is open place and left for public purpose and vests in it as alleged by it. Issue No.3 is answered accordingly.

The Court further holds that the plaintiff failed to prove that it is entitled for declaration of ownership as prayed for. Issue No.5 is answered accordingly.

The Court further holds that the plaintiff failed to prove that it is entitled for perpetual injunction as prayed for. Issue No.6 is answered accordingly”.

4. The plaintiff in O.S.No.130 of 2011 filed A.S.No.1299 of 2018 against the judgment and decree in O.S.No.130 of 2011. The appeal is pending in this Court. Now, the cause of action for filing the writ petition is that the respondents herein against whom the decree of perpetual injunction made in O.S.No.531 of 1978 is operating, by referring to the findings in O.S.No.130 of 2011, which are excerpted above, are trying to interfere with the possession and enjoyment of appellant of petition land and further making construction in the subject matter of the writ petition. The learned

Single Judge after taking note of the undisputed or admitted circumstances declined to entertain the writ petition. The gist of the findings is that the appellant aggrieved by the findings recorded in O.S.No.130 of 2011 is required to file appeal and assail the findings. In the absence of challenge, at the instance of appellant, the prayer as made is untenable.

5. Mr.M.Surender Rao, appearing for appellant, contends that the decree of perpetual injunction in O.S.No.531 of 1978 is subsisting and the respondents could not have interfered with the possession and enjoyment of the appellant of subject matter of writ petition. The highhanded action of State is certainly a case for challenge under Article 226 of the Constitution of India and hence, the writ petition was filed. He further contends that the findings in O.S.No.130 of 2011 ought not to be understood as having become final, for the appeal is pending in this Court. Therefore, he prays for setting aside the order impugned in the writ appeal and further direct the respondents not to interfere with the possession of appellant of subject matter of writ petition.

6. The contentions are merely referred to be rejected. At the outset, for the purpose of disposing of the appeal, it is noted that the cause title in the decree in O.S.No.531 of 1978 shows that the office bearers of Church of South India are shown as plaintiffs. The appellant i.e., Church of South India is not the plaintiff in O.S.No.531 of 1978. Be that as it may, the defendant/judgment debtor in a suit for perpetual injunction, if disobeys the perpetual injunction, the relief of plaintiff/decreed holder is to seek execution in

the manner provided by law. This Court while entertaining the prayer of appellant cannot ignore or overlook the findings recorded by the learned III-Additional District Judge, Karimnagar in O.S.No.130 of 2011 on title, identification etc. Keeping in view the above and also that the parties have already availed the effective remedy by filing O.S.No.130 of 2011, we are not persuaded to entertain the appeal. We are in complete agreement with the reasons recorded by the learned Single Judge and we do not see a ground warranting interference with the order impugned in the appeal. The appellant, if so advised, ought to work out remedies in accordance with law either in this Court or before the trial Court.

7. The writ appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTA THIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

16th August, 2018

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