

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.No.4795 of 2018

ORDER :

This CRP is filed against the docket order dated 30-07-2018 passed in E.P.No.9 of 2016 in O.S.No.216 of 2000, wherein and whereby the application filed under Order 21 Rule 11 of C.P.C. filed by respondent-Decree-holder to deliver the E.P.Schedule property in pursuance to the decree and judgment passed in O.S.No.216 of 200 and the order and decree passed in A.S.No.106 of 2012, is allowed.

Learned counsel for the petitioner submits that there are some structures in the suit schedule property and without considering the objections of the petitioner, straightaway the impugned order is passed and the petitioner requests breathing time for removing of the structures and said aspect was not considered by the Court below. He also submits that there is a deed of dissolution dated 14-08-1991 entered into by the petitioner and respondent dissolving the partnership firm of Radhakrishna Poultries and as per the said deed, the petitioner is entitled to recover certain amounts. As such he prays that liberty may be granted to the petitioner to file civil suit for recovery of amounts by virtue of said dissolution deed dated 14-08-1991.

Whereas, learned counsel for the respondent submits that though initially suit vide O.S.No.216 of 2000, on the file of Principal Junior Civil Judge's Court, Narsapuram against the petitioner-judgment debtor, filed by the respondent-decree holder was dismissed and the appeal preferred by the respondent-decree-holder against the said judgment was allowed vide A.S.No.106 of

2012 on the file of X Additional District Court, Narsapuram. Aggrieved by the same, the petitioner filed appeal in S.A.No.302 of 2016 on the file of this Court and the same was dismissed by this Court by its order 19-07-2016 confirming the judgment and decree passed by the 1st appellate Court. He further submits that claim petitions in E.A.No.110 of 2016 filed by the so-called tenants of the petitioner to declare their tenancy rights over the schedule property basing on the unregistered lease deed and E.A.No.113 of 2016 filed by third parties were also dismissed. By considering the said aspect, the impugned order is passed. He also submits that the respondent has no objection for removing the structures, but basing on the dissolution deed dated 14-08-1991, liberty cannot be granted to the petitioner for filing civil suit. He also submits that the said deed of dissolution is unregistered one, the same was not admitted in evidence in the earlier proceedings.

In this case, it is to be seen that EA Nos 110 and 113 of 2016 filed by the persons claiming to be the tenants of petitioner and third parties respectively, were dismissed. It is not brought to my notice what is the infirmity committed by the Court below in passing the impugned order warranting interference of this Court except saying that delivery order is passed without seeking of mandatory injunction for removal of structures in the suit schedule property. But learned counsel for the petitioner states that time may be granted for removing structures in the suit schedule property.

In view of the same, I do not see any infirmity in the impugned order passed by the Court below and accordingly the CRP is dismissed. However, the petitioner is permitted to remove the

structures in the suit schedule property within a period of four (04) weeks from today. Insofar as liberty to file civil suit is concerned, it is always open for the petitioner to avail such remedy subject to law of limitation. If the petitioner fails to remove the structures within the aforesaid period, it is open for the respondent to go ahead with the process as per the impugned order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this CRP shall stand closed.

20-08-2018

Note:

Issue CC in two days.

B/o.

nvl



JUSTICE A.RAJASHEKER REDDY