

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.595 of 2019

ORDER :

Heard the counsel for petitioner. None appears for respondent.

2. This Civil Revision Petition is filed challenging the order dt.10.10.2018 passed in Civil Miscellaneous Appeal No.03 of 2018 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, confirming the order dt.01.11.2017 passed in I.A.No.445 of 2017 in O.S.No.1352 of 2017 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad.

3. The petitioner herein is plaintiff in the above suit.

4. She filed the said suit with the following prayer :

“(a) pass a decree for perpetual injunction restraining the defendant nos.1 to 3, their agents, representatives, heirs, successors in interest and any person(s) claiming through them from interfering with the usage of open space / common access way (‘B’ Schedule of property) as easement by the plaintiffs in any manner whatsoever and;

(b) pass a decree for mandatory injunction directing the defendants 1 to 3 to provide easement access to the plaintiffs to access her property (i.e. ‘A’ Schedule of property) without causing any hindrance / disturbance whatsoever in the enjoyment of the access way (‘B’ Schedule of property) by the plaintiff and continue to provide access to the plaintiff to her property through the common access way (‘B’ Schedule of property) ;

(c) to award the costs of the suit; and

(d) to further pass such other further order or orders as deemed fit and proper in the circumstances of the case.”

5. It is the case of petitioner that there was a passage behind the property in her occupation to the southern side which was common passage to herself and to defendants, that it had been in use for more than fifty-five years, and that respondent nos.1 and 2 are trying to deprive her of access to the said passage over which she has an easmentary right to use the same.

6. Written Statement was filed by respondent nos.1 to 3 opposing the suit claim. The 2nd defendant / 2nd respondent is the husband of 1st defendant / 1st respondent and the 3rd respondent is the owner of premises bearing No.4-2-459, Sultan Bazar, Hyderabad. They contended that 1st defendant has right of exclusive use of the passage; that petitioner has undertaken illegal and unauthorized construction over the property without permission and had made an attempt to grab and make projections, openings, etc., into the three feet land, and petitioner is interfering illegally with the enjoyment of the said property by 1st respondent. It is alleged that 1st respondent then filed a complaint on 07.04.2017 before the Greater Hyderabad Municipal Corporation, but they did not take any action, and so the 1st respondent filed Writ Petition No.15729 of 2017 against petitioner and others, including the Greater Hyderabad Municipal Corporation, and the said Writ Petition was disposed of directing the Greater Hyderabad Municipal Corporation and its Town Planning Section to take action for removing the illegal construction. In fact, the claim of

petitioner for title to the property bearing H.No.4-2-458, Sultan Bazar, Hyderabad is also disputed by respondents.

7. Respondents contended that there was an exclusive wall towards the eastern side of petitioner's property, and there is no open space in between petitioner's property and that of the 3rd respondent. It was specifically denied in the Written Statement that there was access to petitioner as well as to 3rd respondent through the said lane / passage; and it is stated that petitioner and her family members never used to enter the passage.

8. Pending suit, the petitioner filed I.A.No.445 of 2017 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 to restrain the respondents from interfering with the usage of common access as easement by petitioner in any manner whatsoever by reiterating the contents of the plaint.

9. Counter-affidavit was filed by 1st respondent opposing the said I.A. reiterating the contents of Written Statement.

10. By order dt.01.11.2017, the Court below dismissed I.A.No.445 of 2017 in O.S.No.1352 of 2017. It held that the order passed by this Court in Writ Petition No.15729 of 2017 on 27.04.2017 shows that complaint was given to the Greater Hyderabad Municipal Corporation by the 1st respondent about the petitioner making illegal constructions; that the petitioner suppressed about it in the plaint; and though the petitioner claimed to have a common passage access, since the

petitioner did not approach the Court with clean hands she is not entitled to temporary injunction.

11. Assailing the same, the petitioner filed Civil Miscellaneous Appeal No.3 of 2018.

12. By order dt.10.10.2018, the Court below dismissed the said appeal also. It referred to the order dt.31.10.2017 passed in Writ Appeal No.1598 of 2017, an appeal preferred by petitioner against the order dt.27.04.2017 passed in Writ Petition No.15729 of 2017, and observed that the order in the Writ Appeal also indicates about the complaint being filed by 1st respondent against the State, Greater Hyderabad Municipal Corporation and petitioner; and there was a reference to an application for regularization to be filed under Section 455-A of the Greater Hyderabad Municipal Corporation Act, 1955 therein by petitioner; that there was no order of injunction in favour of petitioner in respect of the disputed passage ever since the filing of I.A.No.4472 of 2017, and so the order of the Court below did not warrant any interference.

13. Assailing the same, the present Civil Revision Petition is filed.

14. From the facts narrated above, it is clear that both the Trial Court as well as the first Appellate Court refused interim injunction to petitioner on the ground that petitioner suppressed certain facts relating to construction being carried on by petitioner.

15. In the Written Statement filed by respondents, there is a specific plea raised by respondents that only the 1st respondent has exclusive right to use the passage in between the properties of petitioner and 1st respondent; and that petitioner was attempting to grab the passage by making illegal and unauthorized construction over the property bearing No.4-2-458, and thus interfering with the enjoyment of the three feet lane by 1st respondent. Therefore, it appears that the respondents' stand is that it is the petitioner that is making illegal and unauthorized construction and is trying to prevent the respondents from using the passage.

16. These are matters for trial, and no opinion can be expressed either way at this point of time. *Prima facie*, the conclusion of the trial court and the lower appellate court are based on appreciation of evidence on record.

17. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference with the order dt.10.10.2018 passed in Civil Miscellaneous Appeal No.03 of 2018 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, confirming the order dt.01.11.2017 passed in I.A.No.445 of 2017 in O.S.No.1352 of 2017 on the file of the XX Junior Civil Judge, City Civil Court, Hyderabad.

18. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

19. However, the Court below shall decide the suit uninfluenced by any observations made in the order passed by the Trial Court or by the lower Appellate Court or by this Court in this order. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17.06.2019

Ndr/*

