

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.597 of 2019

O R D E R :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.08.02.2019 in I.A.No.229 of 2019 in O.S.No.870 of 2016 passed by the VI Junior Civil Judge, City Civil Court, Hyderabad.

The petitioners are plaintiffs in the suit O.S.No.870 of 2016.

They filed the said suit for perpetual injunction restraining respondent No.1/Defendant No.1 from interfering with the construction work or demolishing any part of the suit schedule property.

Respondent Nos.2 and 3 were impleaded as defendant Nos.2 and 3 in the said suit pursuant to the order dt.31.10.2017 in C.R.P.No.2391 of 2017 passed by this Court.

They filed a counter claim in the said suit for grant of mandatory injunction to direct respondent No.1/Defendant No.1 to take action to demolish the alleged illegal construction made by the petitioners in the suit schedule property.

It is not in dispute that W.P.No.14418 of 2013 was also filed before this Court by respondent Nos.2 and 3 seeking a direction to respondent No.1 to initiate appropriate action against the illegal constructions undertaken by one Sri G. Dayanand Reddy, who is developing the property on behalf of the petitioners herein.

I.A.No.229 of 2019 in O.S.No.870 of 2016 was filed by the petitioners invoking Section 151 of C.P.C., seeking a prayer to respondent Nos.2 and 3 to elect either to pursue the said writ petition or the counter claim. It is their contention that respondent Nos.2 and 3 cannot simultaneously pursue the parallel remedies, one in the Civil Court and the other in High Court, for the very same relief.

Counter affidavit was filed by respondent Nos.2 and 3 opposing the said application and pointing out that in C.R.P.No.5831 of 2018 there was a direction given by the High Court to decide the suit, as expeditiously as possible, within six months and this application is filed only to delay the disposal of the suit. It was also contended that the counter claim pleadings and the writ petition proceedings are independent pleadings and they have a liberty to pursue both the remedies.

By order dt.08.02.2019, the Court below dismissed I.A.No.229 of 2019, observing that since the writ petition was filed against the developer, and in the instant suit, he is not made a party, the Court cannot give a direction to respondent Nos.2 and 3 to make election. It also observed that doctrine of election is dealt under Section 35 of the Transfer of Property Act and hence it does not apply. Lastly, it was observed that there is a direction by the High Court in C.R.P.No.5831 of 2018 to dispose of the suit within six months and the petitioners have knowledge of it and

instead of proceeding with the trial, they are filing the applications only to stall the suit proceedings.

Challenging the said order dt.08.02.2019, the petitioners have filed the present Civil Revision Petition.

Heard learned counsel for the petitioners and the learned counsel for respondent Nos.2 and 3.

Though, learned counsel for the petitioners sought to contend that the impugned order passed by the Court below is erroneous, having regard to the fact that there is a direction given by this Court in C.R.P.No.5831 of 2018 on 30.10.2018 to decide the suit expeditiously within six months, the Court below was right in not accepting the request of the petitioners. However, the observations in para-15 of its order are not necessary to take a view that it would decide the suit. Therefore, the impugned order dt.08.02.2019, to the extent of the said observations, is set aside and the Court below shall decide the suit and the counter claim uninfluenced by any observations made by it in the impugned order dt.08.02.2019.

It is made clear that this Court has not expressed any opinion on the respective contentions of the parties in the suit, including the contention about election of remedy.

Both the parties are directed to cooperate with the Court below for expeditious disposal of the suit.

Accordingly, this Civil Revision Petition is disposed of. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

26.03.2019
Msr



HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.597 of 2019



26.03.2019

Msr