

**THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

**W.P.No.6925 of 2019**

**ORDER**

This writ petition is filed seeking to declare the action of respondents 1 to 3 in not taking any action on the complaints/representations made by the petitioner on 19.01.2019 and 19.02.2019, against the unauthorized constructions made by the 4<sup>th</sup> respondent in Plot Nos.10/part, 11/part, 12/part, 13/part, 14/part and 15/part, in Sy.No.28, situated at Upperpally Village, Rajendranagar Manal, Ranga Reddy District, as illegal and arbitrary.

2. The petitioner asserts that after demise of his father, the subject property devolved upon him and his sister. He asserts that as his sister had executed a sale deed in favour of the 4<sup>th</sup> respondent with respect to the land to an extent of 240 sq. yards, which is joint family property, he filed suit in O.S.No.23 of 2019 on the file of the XIII Additional District Judge, Ranga Reddy at L.B.Nagar, for partition of the suit schedule property by metes and bounds by allotting 2/3<sup>rd</sup> share to him and 1/3<sup>rd</sup> share to his sister-defendant No.1 and for declaration to declare the registered sale deed dated 24.12.2018 vide document No.13778 of 2008 as null and void. Pending the said suit, the petitioner filed I.A.No.40 of 2019 in O.S.No.23 of 2019 and obtained interim injunction on 04.01.2019 restraining the 2<sup>nd</sup> respondent, 4<sup>th</sup> respondent herein, from altering or changing the nature of the petition schedule property. The petitioner further asserts that in spite of the said injunction order, the 4<sup>th</sup>

respondent is proceeding with the construction. He also asserts that though he made complaints to the Commissioner, the Zonal Commissioner and the Assistant City Planner, GHMC, on 19.01.2019 and 19.02.2019, complaining about the alleged unauthorized constructions made by the 4<sup>th</sup> respondent by creating some false documents, the official respondents are not taking any action.

3. Learned Standing Counsel for respondents 1 to 3 submits that the petitioner having invoked the jurisdiction of the civil Court for declaration and obtained interim injunction ought to have approached this Court by filing the writ petition alleging that the 4<sup>th</sup> respondent is making constructions unauthorizedly and that if there is any violation on the part of the 4<sup>th</sup> respondent and the parties to the civil suit, petitioner has primary remedy in the suit and the writ petition is not maintainable.

4. Having regard to the respective submissions, there is no dispute that the petitioner has filed suit for partition with respect to the subject property and there was also an allegation that the 4<sup>th</sup> respondent is making constructions. As can be seen from the plaint document filed by the petitioner, in all fairness, the 4<sup>th</sup> respondent is the 2<sup>nd</sup> defendant in the suit and that the civil Court having considered the material on record had passed the aforesaid interim order with a further direction to list the matter on 28.01.2019. In those circumstances, as the petitioner had already invoked the jurisdiction of the civil Court with respect to the alleged constructions made by the 4<sup>th</sup> respondent and that the disputed questions as to

whether the petitioner has right over the subject property or not and whether the sale deed alleged to have been obtained by the 4<sup>th</sup> respondent is valid or not, can be decided by the civil Court after full-fledged trial. Even assuming that the 4<sup>th</sup> respondent is making constructions without obtaining sanctioned plan, since the prayer in the writ petition as well as the injunction petition, as sought for by the petitioner, would incidentally for the same issue, the petitioner has remedy to seek amendment of the relief in the plaint.

5. In view of the aforesaid reasons, this Court is not inclined to entertain the writ petition and the same is liable to be dismissed.

6. Accordingly, the Writ Petition is dismissed. No order as to costs.

7. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

2<sup>nd</sup> April, 2019

sj

**CHALLA KODANDA RAM, J**