

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.1234 and 1255 of 2019

COMMON ORDER :

Since these two Revisions arise out of the same suit between the same parties and, in fact, the same order dt.15.04.2018 passed in Civil Miscellaneous Appeal No.102 of 2017 on the file of the II Additional District Judge, at Lal Bahadur Nagar, Ranga Reddy District is questioned in both these cases, they are being disposed of by this Common Order.

2. Civil Revision Petition No.1234 of 2019 is filed by defendants in Original Suit No.87 of 2016 on the file of I Junior Civil Judge, City Civil Court, Secunderabad (presently Original Suit No.986 of 2017 on the file of V Additional District Judge, Lal Bahadur Nagar, Ranga Reddy District); and Civil Revision Petition No.1255 of 2019 is filed by plaintiffs in the said suit.

3. The parties herein will be referred to as per their array in the Trial Court.

4. The plaintiffs filed I.A.No.61 of 2016 in the Court of the I Junior Civil Judge, City Civil Court, Secunderabad under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 for grant of an *ad interim* injunction in favour of plaintiffs against defendants in

respect of the suit schedule property which is said to be a plot of extent 1600 Sq.Yds. located in Begumpet Village in Survey No.194/1.

5. While the plaintiffs contended that they have title as well as possession of the plaint schedule property, the defendants disputed the same.

6. The defendants had earlier filed Interlocutory Application No.119 of 2016 in the Trial Court for return of the plaint invoking Order VII Rule 10 of Civil Procedure Code, 1908 stating that the I Junior Civil Judge, City Civil Court, Secunderabad had no territorial jurisdiction to entertain the suit.

7. The said application was dismissed and though a Revision was preferred to this Court, this Court directed the Trial Court to decide the issue of territorial jurisdiction as a preliminary issue.

8. In the Trial Court, in I.A.No.61 of 2016, the plaintiffs filed (25) documents and defendants filed (32) documents which are described in paragraph Nos.11 and 12 of the order of the Trial Court in I.A.No.61 of 2016.

9. The Trial Court marked only the documents filed by plaintiffs as exhibits and did not mark any of the documents filed by defendants. On the ground that there was a prior suit filed by defendants viz., Original Suit No.132 of 2016 against plaintiffs and on the ground that the issue of territorial jurisdiction is yet to be decided,

the Trial Court refused to grant temporary injunction to the plaintiffs in I.A.No.61 of 2016.

10. When the plaintiffs filed Civil Miscellaneous Appeal No.102 of 2017 before the II Additional District Judge, at Lal Bahadur Nagar, Ranga Reddy District, the said Court allowed the appeal and directed maintenance of *status quo* by plaintiffs without raising any constructions except tin sheets, but put fencing to safeguard the property till the disposal of the suit.

11. In its order, the lower Appellate Court discussed only one Memorandum of Understanding marked as Ex.P.6 in the Trial Court and ignored all the documents filed by defendants and came to the conclusion that the plaintiffs have proved *prima facie* case, balance of convenience; and that if injunction is not granted, the plaintiffs would suffer irreparable loss.

12. Assailing the same, the defendants filed Civil Revision Petition No.1234 of 2019; and plaintiffs filed Civil Revision Petition No.1255 of 2019, challenging the order of the lower Appellate Court to the extent it directed the plaintiffs to maintain *status quo* and directed them not to raise constructions in the suit schedule property.

13. The counsel for defendants contended that the approach of both the Trial Court as well as Appellate Court cannot be appreciated at all since the Trial Court ought to have marked the documents filed by defendants as well, and the lower Appellate Court at least should have

considered the documents filed by defendants; and the order passed by the lower Appellate Court, only relying on one document produced by plaintiffs, ignoring every document filed by the defendants, is not sustainable.

14. The counsel for plaintiffs on the other hand contended that the Trial Court order is erroneous and the material placed on record by the plaintiffs before the Trial Court warranted grant of temporary injunction by it, but it did not grant it; and there is nothing wrong in the lower Appellate Court relying on the Memorandum of Understanding dt.27.11.2012 and granting relief to the plaintiffs, because the said document is not disputed by defendants. He also contended that to the extent the lower Appellate Court directed plaintiffs to maintain *status quo* without raising any constructions, its order is not correct and that portion of the order of the lower Appellate Court requires to be set aside.

15. I have noted the submissions of both sides.

16. Admittedly, valuable rights to immoveable property located in the heart of the Secunderabad city are in dispute in the suit.

17. Both parties have relied on several documents in support of their respective contentions. The trial Court had referred in paragraph No.11, twenty-five (25) documents filed by plaintiffs; and in paragraph no.12, thirty-two (32) documents filed by defendants. Why it did not mark the documents filed by defendants in its order the Trial

Court has not given any reason, particularly when some of documents filed by defendants are certified copies of registered documents.

18. This approach of the Trial Court in not marking documents filed by defendants for the purpose of deciding the Interlocutory Application and only marking the documents filed by plaintiffs, cannot be countenanced.

19. Also, merely because there is an earlier suit filed by defendants against plaintiffs which is pending, and merely because the issue of territorial jurisdiction is to be decided in the suit as preliminary issue, it cannot avoid deciding on merits the I.A.No.61 of 2016; and also whether the plaintiffs are entitled to temporary injunction or not after considering the material produced by both parties and the respective contentions.

20. Coming to the lower Appellate Court order, the lower Appellate Court has given no reason why it did not refer to any documents filed by defendants in the Trial Court.

21. As already stated, the defendants have filed (32) documents before the Trial Court and it had referred to the said documents in paragraph No.12 of its order.

22. It was incumbent on the part of the lower Appellate Court to consider the documents placed on record by both parties to decide whether the order passed by the Trial Court in I.A.No.61 of 2016 is to be sustained or reversed.

23. When valuable rights of parties to the immoveable property are in dispute, both the Trial Court and the Appellate Court should have adopted a judicial approach in deciding the interim applications which have a significant bearing on the rights of the parties ultimately. Instead, they have adopted a very casual approach in dealing with I.A.No.61 of 2016 and Civil Miscellaneous Appeal No.102 of 2017.

24. Accordingly, the Civil Revision Petitions are allowed. The order dt.15.04.2018 passed in Civil Miscellaneous Appeal No.102 of 2017 on the file of the II Additional District Judge, at Lal Bahadur Nagar, Ranga Reddy District, and order dt.29.06.2017 passed in I.A.No.61 of 2016 in Original Suit No.87 of 2016 on the file of I Junior Civil Judge, City Civil Court, at Secunderabad, are both set aside. The matter is remanded back to the Court of the V Additional District Judge, at Lal Bahadur Nagar, Ranga Reddy District (to whom the suit Original Suit No.87 of 2016, is now transferred and re-numbered as Original Suit No.986 of 2017) to decide, after considering the contentions of both sides and the documents filed by both sides within a period of four (04) weeks from the date of receipt of copy of the order.

25. The said Court shall decide the said I.A.No.61 of 2016 uninfluenced by any observations made in the order dt.29.06.2017 passed in I.A.No.61 of 2016 in Original Suit No.87 of 2016 on the file of I Junior Civil Judge, City Civil Court, at Secunderabad, or in the order dt.15.04.2018 passed in Civil Miscellaneous Appeal No.102 of

2017 on the file of the II Additional District Judge, at Lal Bahadur Nagar, Ranga Reddy District.

26. Accordingly, the Civil Revision Petitions are allowed as above.

No order as to costs.

27. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.07.2019

Ndr/*

