

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.M.A.No.657 of 2018

JUDGMENT:

Heard both sides.

2. This Appeal is filed challenging the order dt.01.02.2018 in I.A.No.317 of 2018 in O.S.No.195 of 2017 of the XIX Additional Senior Civil Judge, City Civil Court, Secunderabad.

3. The appellant herein is the father-in-law of the respondent.

4. He filed the said suit against the respondent for eviction of the respondent alleging that the respondent is staying in the suit schedule property which is the ground floor portion of the building owned by the appellant; that the respondent became abusive and disrespectful towards appellant and his wife; that the respondent started a boutique in a small way in the suit schedule property without seeking any permission from the appellant and without having any license to do any business activity therein; that the use of the suit schedule premises by the respondent had caused great inconvenience to him and his wife by way of intrusion into the premises of strangers at all odd hours of the day and night; that the process of dress making and embroidery involved the

employment of tailors and other staff, and have made the place a noisy one and a market place; that himself and his wife are senior citizens and this has caused them untold hardship in their peaceful life; that the son of the appellant had moved out of the appellant's house, but the respondent had refused to move from the suit schedule property and continued to occupy the ground floor portion; that his son had instituted proceedings for divorce at Family Court, Hyderabad and that he himself had issued a legal notice on 22.05.2017 terminating the license in the respondent's favour to occupy the premises and directing the respondent to vacate the portion under her occupation, but having received the said notice, she did not vacate the said premises.

5. Written Statement was filed by the respondent denying that the appellant is a landlord and she is a tenant, and contending that the suit itself is not maintainable. She contended that appellant and his son colluded with each other and started litigating against her, and a divorce petition was filed against her by the son of the appellant making false allegations. It is also alleged that the respondent had started a boutique in the suit schedule property with the help of the money advanced by the father and brother of the respondent,

so that the respondent would have a source of income and would survive, and that her husband had a meager income and they were largely dependent on the money that respondent's father used to send to respondent for her day to day expenditure. She denied that any license was required to run the boutique and stated that there was implied consent of the appellant, his wife and their son for her to run the boutique in the premises. She denied that there was any inconvenience being caused to the appellant and his wife by way of intrusion into the premises of strangers. She stated that the process of dress making and embroidery involves employment of tailors and other staff, but denied that there was any disturbance caused to the appellant and his wife of the use of the suit schedule property as a boutique. She also stated that the son of the appellant abandoned her and started living separately, and that the appellant and his wife and son have financially exploited the respondent's father.

6. Pending the suit, appellant filed I.A.No.317 of 2018 under Order XXXIX Rules 1 & 2 CPC to direct the respondent to stop all commercial activities in the ground floor portion of the suit schedule property. He reiterated the contents of the plaint.

7. Respondent filed a counter opposing the said application and reiterated the contents of her written statement.

8. By order dt.01.02.2018, the Court below dismissed the said I.A. It observed that the suit schedule property is claimed to be a residential premises owned by the appellant and it is not the case of the appellant that the Greater Hyderabad Municipal Corporation imposed any tax on the appellant treating it as one used for commercial purpose; and if any additional financial burden falls on the appellant, the Court observed that it would make it good through the respondent at the time of judgment in the suit. It observed that the Court cannot conclude on the basis of photographs filed by the appellant that the respondent is running commercial activity in the suit premises, and that the respondent is using it not only for her residence but also for commercial purposes; that if the respondent gets evicted ultimately in the suit, the appellant can get mesne profits from the respondent, who claims to be a licensee in possession of the suit schedule property. It observed that because there are matrimonial disputes between the respondent and her husband, the Court did not see any merit to direct the respondent to stop the alleged commercial

activity by respondent; that the respondent was admittedly in possession of the suit schedule property and she cannot be restrained by imposition of any condition to enjoy her possession merely because she is doing some online fashion pursuit in connection with her profession; and that it is a matter to be proved upon oral and documentary evidence in the suit. It also observed that at the stage of I.A., it cannot be concluded, whether the respondent is carrying on her profession as fashion designer working from home or she is doing open commercial business in the schedule property and any conditional order to stop all commercial activities would be difficult to implement when the respondent is in possession of the property and is not carrying on any unlawful activities. It also observed that there are no bonafides on the part of the appellant and no case for grant of a temporary injunction is made out.

9. Assailing the same, this Appeal is filed.

10. Counsel for the appellant contended that the appellant and his wife are senior citizens; that appellant is owner of the suit schedule property and the respondent is a licensee; that when the appellant had objected to the use of the suit schedule premises for the running of a boutique by the respondent, since it is disturbing the personal life of the

appellant and his wife, the Court below cannot refuse to grant relief to the appellant. It is also contended that when the respondent herself had admitted about her doing commercial activity in the premises, the Court below was not correct in saying that the said fact needs to be proved in trial.

11. Counsel for the respondent on the other hand supported the order passed by the Court below and contended that as the wife of the son of the appellant, the appellant has a right to reside in the suit schedule property under the provisions of The Protection of Women from Domestic Violence Act, 2005; that the appellant and his son have colluded with each other and son of the appellant had vacated the premises and allowed the appellant to file the suit to harass the respondent and deprive her of the source of livelihood by running the boutique in the premises. She also contended that from 2004 onwards, with the blessings of the appellant, the boutique was being run, but now with a malafide intention, the appellant has filed the suit and the I.A., to stop the respondent from having a means of livelihood.

12. I have noted the contentions of both sides.

13. The suit has been filed for eviction of the respondent by the appellant, who is admittedly the owner of the suit schedule premises.

14. The respondent, being the daughter-in-law of the appellant and who claims to have been abandoned by the son of the appellant, seeks a right to occupy the matrimonial home on the basis of the rights conferred on her by the Protection of Women from Domestic Violence Act, 2005.

15. However, assuming that she has such a right as per the above statute, the rights of the appellant and his wife as Senior Citizens, to lead a peaceful life cannot also be ignored.

16. It may be that there are disputes between the respondent and her husband, but that does not entitle the respondent to do commercial activity by running a boutique in the suit schedule property, since such activity would lead to engagement of men such as tailors and staff to carry on tailoring activity in the premises, which would undoubtedly cause disturbance to the life of the senior citizens i.e., appellant and his wife.

17. When the respondent herself admitted that she is running a boutique in the suit schedule property, the Court below ought not to have said that it is a matter for evidence

as to whether the respondent is using the premises for commercial business purpose.

18. Also, the Court below could not have stated that it would compensate the appellant if any additional tax for use of the premises for commercial purpose is imposed or award mesne profits if the suit is to be ultimately decreed evicting the petitioner, because there is no prayer in the suit either for mesne profits or for compensation for additional taxes.

19. While the rights of the respondent as the daughter-in-law of the appellant and the wife of the son of the appellant are undoubtedly important, so also are the rights of the senior citizens like the appellant and his wife, and both are required to be balanced.

20. The finding of the Court below that when the respondent is in possession of the suit schedule property she cannot be restrained by imposing any condition to enjoy the possession is clearly perverse and cannot be sustained. It also cannot say that the respondent is not carrying on any unlawful activity and that because there is a matrimonial dispute between the respondent and son of the appellant, there are no bonafides on the side of the appellant, since the premises in question is admittedly the property of the

appellant, and if he has any objection for use of the premises for a commercial purpose (other than residential), on the ground that inconvenience is caused to him and his wife by way of entry of strangers to the premises and making the place a noisy place, the Court below should have respected the needs of appellant and his wife as well, instead of showing sympathy only to the respondent.

21. Therefore, this CMA is allowed; the order dt.01.02.2018 in I.A.No.317 of 2017 in O.S.No. 195 of 2017 of the XIX Additional Senior Civil Judge, City Civil Court, Secunderabad is set aside; and the said I.A., is allowed. No order as to costs.

22. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

08th April, 2019.

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