

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2231 OF 2019

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, by the petitioner/defendant, challenging the order dated 08.07.2019 passed in C.M.A.No.1 of 2019 by the learned Judge, Family Court-cum-VII Additional District Judge, Medak, at Sangareddy, whereunder the learned Judge allowed the said CMA and granted interim mandatory injunction in favour of the respondents/plaintiffs by setting aside the order dated 04.12.2018 passed in I.A.No.1647 of 2018 in O.S.No.301 of 2018 by the learned Senior Civil Judge, Sangareddy.

2) The revision petitioner is the defendant and the respondents herein are the plaintiffs in the original suit. Hereinafter, the parties are referred to as plaintiffs and defendant.

3) In brief, the facts that led to filing of this C.R.P are that the plaintiffs filed O.S.No.301 of 2018 seeking declaration and mandatory injunction against the defendant in respect of common passage of 5'.8' width (5 feet 8 inches) existing in between the H.Nos.5-2-34/1 and 5-2-35, situated beside District Court Complex, Sangareddy Town and District. The plaintiffs filed I.A.No.1647 of 2018 under Order 39 Rules 1 and 2 CPC seeking temporary injunction against the defendant. The trial Court vide order dated 04.12.2018, dismissed the said petition. Aggrieved, the plaintiffs preferred C.M.A.No.1 of 2019 before the learned Judge, Family Court-cum-VII Additional District Judge, Medak, at

Sangareddy, whereby and whereunder the learned Judge allowed the said CMA by setting aside the order dated 04.12.2018 passed in I.A.No.1647 of 2018 in O.S.No.301 of 2018 by the trial Court and granted interim mandatory injunction in favour of the plaintiffs directing the defendant to remove the walls constructed by the defendant obstructing the free passage in the suit common passage within two months from thereon. Hence the present civil revision petition.

4) Heard Sri B.Adinarayana Rao, learned Senior Counsel for Sri Srinivasa Rao Bodduluri, learned counsel for the revision petitioner/defendant, Sri Vijay Kumar Heroor, learned counsel for the respondents/plaintiffs and perused the record.

5) Learned Senior Counsel Sri B.Adinarayana Rao, appearing for the revision petitioner/defendant would contend that the plan annexed to Ex.P.4-certified copy of sale deed bearing document No.6725/1986 dated 20.08.1986 cannot be looked into and it is not part of the registered sale deed. The appellate Court erroneously passed the impugned order and ultimately prayed to set aside the same by allowing the revision petition.

6) On the other hand, learned counsel for the respondents/plaintiffs would contend that Ex.P.4-sale deed as well as the plan annexed thereto are required to be looked into to find out whether there was a common passage or not. It is further contended that on 20.09.2018, the defendant had commenced construction of wall in the common passage and high handedly completed the said construction on 26.09.2018, causing

obstruction for the ingress and egress of the plaintiffs. Therefore, the plaintiffs are entitled for mandatory injunction as prayed for. The appellate Court is justified in passing the impugned order. There is no illegality or perversity in the order under challenge and ultimately prayed to dismiss the revision petition.

7) In view of the submissions made by both sides, the point that arises for determination is:

“Whether the impugned order dated 08.07.2019 passed in C.M.A.No.1 of 2019 by the learned Judge, Family Court-cum-VII Additional District Judge, Medak, at Sangareddy, is liable to be set aside?”

8) POINT: The defendant is claiming title in the disputed property. The plaintiffs are claiming the suit passage as a common passage. Pending the subject suit, the plaintiffs filed I.A.No.1647 of 2018 and sought interim mandatory injunction to demolish the structures raised by the defendant in the common suit passage. Admittedly, the entire suit common passage along with the property purchased by both the parties to the suit, originally belonged to the owner-Hymavathi. Ex.P.4 is the certified copy of sale deed bearing document No.6725/1986. The original of the said document is executed by owner-Hymavathi, in favour of the plaintiffs. There is a plan annexed to Ex.P.4, wherein there is specific mention of existence of suit common passage. The entire sale deed (Ex.P.4) along with plan annexed thereto is required to be read to find out the transaction made pursuant to that document. The contention of the learned Senior Counsel Sri

B.Adinarayana Rao, appearing for the revision petitioner/defendant that the plan annexed to Ex.P.4-certified copy of sale deed cannot be looked into, is unsustainable. It is made clear that the sale deed as well as the plan annexed thereto (Ex.P.4) are required to be looked into to find out whether there was a common passage or not. As per the documents placed on record, much before the alienation made in favour of the defendant, the adjoining property was alienated to the plaintiffs showing the disputed site as a common passage. Ex.P.4-sale deed bearing document No.6725 of 1986 dated 20.08.1986 was signed by the original owner-Hymavathi, which demonstrates the existence of common passage. So the contention of the revision petitioner/defendant that the common passage was purchased by her alone, is not acceptable. As per the documents placed by both sides, there is no flow of absolute title and possession in favour of the defendant in respect of suit common passage. The revision petitioner/defendant cannot close the suit common passage. The circumstances governing granting of interim mandatory injunction i.e, *prima facie* case and balance of convenience are in favour of the respondents/ plaintiffs. The day-to-day passage of the plaintiffs has been obstructed by the defendant by raising structures over the suit common passage and thereby causing greater hardship and inconvenience to the plaintiffs. If the interim mandatory injunction as prayed for is not granted to the plaintiffs, the plaintiffs will be put to grave injury and irreparable loss. Therefore, the appellate Court is justified in passing the impugned order. There is nothing to vary the same. No perversity or

illegality is found in the order under challenge. The Civil Revision Petition is devoid of merits and is liable to be dismissed.

9) Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

10th December, 2019
scs

Dr. SHAMEEM AKTHER, J

