

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.994 of 2019

JUDGMENT:

This Civil Miscellaneous Appeal, under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), is filed aggrieved by the order, dated 15.10.2019, passed in I.A.No.957 of 2019 in O.S.No.220 of 2019 by the Judge, Family Court-cum-VII Additional District Judge, Medak at Sangareddy, wherein the petition filed under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C, to grant *ad-interim* injunction in favour of the appellants herein/plaintiffs by restraining the respondent herein/defendant herein from interfering with their peaceful possession and enjoyment over the petition schedule properties, was dismissed.

2. Heard the learned counsel for the appellants/plaintiffs, learned for the respondent/defendant and perused the record.

3. Learned counsel for the appellants would submit that the appellants filed number of documents before the Court below to substantiate their lawful possession over the petition schedule properties, but, however, the Court below did not consider the same and erroneously dismissed the application. He further submitted that the documents filed by the appellants establishes *prima facie* case and balance of convenience in their favour for grant of relief under Order XXXIX Rules 1 and 2 C.P.C and ultimately prayed to set aside the impugned order and allow I.A.No.957 of 2019 as prayed for.

4. On the other hand, learned counsel for the respondent/defendant would contend that the decree passed in O.S.No.502 of 2008, covers part of present suit in O.S.No.220 of 2019, in respect of land to an extent of Ac.1.04 guntas in Survey No.10/A situated at Sangareddy, and the said decree is subsisting. Learned counsel further submitted that there are Execution Proceedings in E.P.No.68 of 2012, to which, appellants 1, 3 and 18 herein are parties. By suppressing the material facts, the present suit i.e, O.S.No.220 of 2019 was filed and interim injunction was sought for by the appellants. It is further submitted that the Court below, after perusing the documents as well as the material on record, rightly dismissed the subject application and ultimately prayed to dismiss the Civil Miscellaneous Appeal.

5. There is a record to show that the respondent herein filed a suit in O.S.No.502 of 2008 on the file of Principal Junior Civil Judge, Sangareddy, for declaration and consequential relief against appellants 1, 3 and 18 herein and obtained a decree on 31.03.2009, and the same is subsisting. It is relevant to state that after obtaining decree, the respondent herein also filed E.P.No.68 of 2012 against appellants 1, 3 and 18 for recovery of part of petition schedule properties. Under these circumstances, it cannot be said that there is *prima facie* case and balance of convenience in favour of the appellants to grant the relief as prayed for under Order XXXIX Rules 1 and 2 read with 151

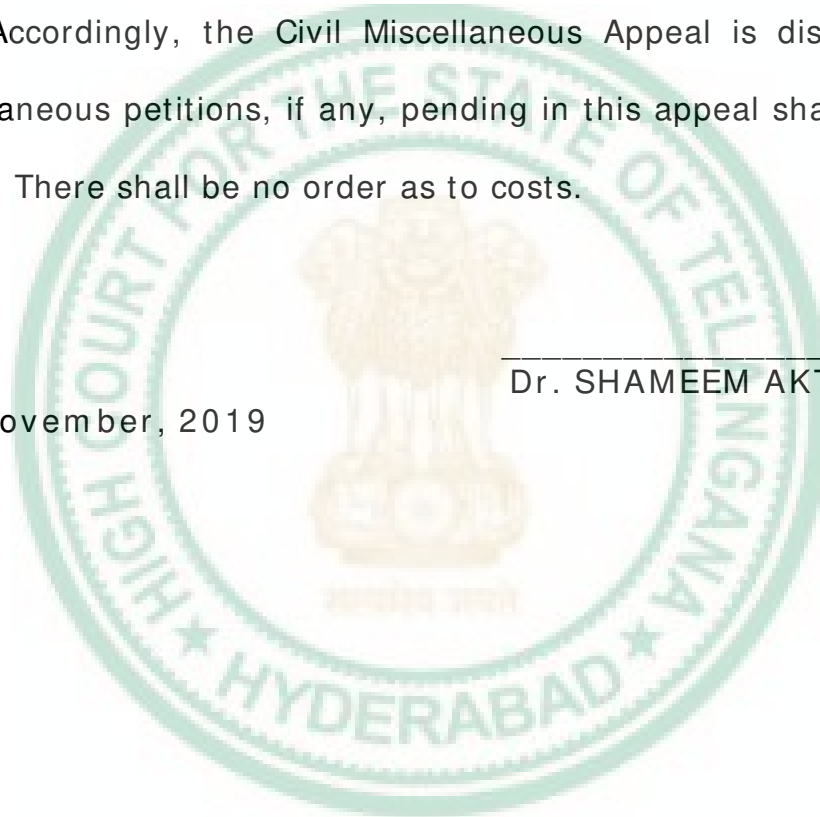
C.P.C. The Court below has discussed the details of the documents filed by both sides and passed the impugned order.

6. Under these circumstances, there is no *prima facie* case and balance of convenience in favour of the appellants/plaintiffs to grant the relief as sought for in the subject Interlocutory Application. The Civil Miscellaneous Appeal is devoid of merit and the same is liable to be dismissed.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

29th November, 2019
YVL

Dr. SHAMEEM AKTHER, J



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



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Date:29.11.2019

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