

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.5993 of 2018

ORDER :

This Civil Revision Petition is filed, under Article 227 of the Constitution of India, challenging the order dated 21.08.2018 in I.A.No.614 of 2018 in CMA.No.51 of 2018 on the file of III Additional District Judge, Ranga Reddy District, L.B. Nagar (lower appellate Court).

The petitioner herein is the plaintiff in the suit O.S.No.295 of 2018 on the file of the Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar (trial Court).

He filed the said suit for partition and separate possession of 1/7th share in the plaint schedule property.

Pending the suit, he filed I.A.No.467 of 2018 under Order 39 Rule 1 and 2 of C.P.C., for grant of ad-interim injunction, restraining the respondents/defendants from demolishing the structure/ changing the nature of the suit schedule property till disposal of the suit.

By order dated 11.06.2018 in I.A.No.467 of 2018 in O.S.No.295 of 2018, the trial Court directed the parties to maintain *status quo* till disposal of the main suit.

The respondents then challenged the said order dated 11.06.2018 by way of filing appeal in CMA.No.51 of 2018.

They also filed I.A.No.614 of 2018 in CMA.No.51 of 2018 to suspend the *status quo* order dated 11.06.2018 in I.A.No.467 of 2018 in O.S.No.295 of 2018 passed by the trial Court.

During the course of arguments in the said I.A., learned counsel for the appellants in CMA/respondents in CRP/defendants in the suit gave an undertaking before the lower appellate Court in the presence of his clients stating that his clients will not claim any equities irrespective of the result of the suit and sought permission to proceed with the construction in the suit schedule property.

An Undertaking Memo was also filed by the respondents before the lower appellate Court, wherein they stated that they would not alienate or create any third party interest in the suit schedule property till disposal of the suit.

The lower appellate Court, however, suspended the *status quo* order merely stating that the respondents shall abide to the terms of Undertaking Memo till disposal of the Civil Miscellaneous Appeal, but did not pass the said order subject to the undertaking given by the counsel for the respondents that his clients will not claim any equities.

Assailing the same, this Civil Revision Petition is filed.

Learned counsel for the petitioner sought to contend that the lower appellate Court should have suspended the *status quo* order dated 11.06.2018, if at all, subject to the

undertaking given by the counsel for the respondents that the respondents would not claim any equities irrespective of the result of the suit and it erred in not doing so.

Learned counsel for the respondents contended that only one Memo was filed by the respondents through their counsel and in that Memo the respondents did not say that they will not claim any equities irrespective of the result of the suit and they would proceed with the construction in the suit schedule property on the said basis.

When the learned counsel for the respondents before the lower appellate Court had clearly and unequivocally stated in the presence of the respondents that the respondents would not claim any equities irrespective of the result of the suit and on that condition sought suspension of the *status quo* order dated 11.06.2018 granted by the trial Court with a permission to the respondents to proceed with the construction, the lower appellate Court ought to have granted suspension of the *status quo* order dated 11.06.2018, subject to the said undertaking given by the counsel for the respondents and not merely on the basis of the Memo filed by the respondents.

In my considered view, the lower appellate Court has committed a grave error in not making the suspension of the *status quo* order dated 11.06.2018, subject to the undertaking given by the counsel for the respondents that the

respondents will not claim any equities irrespective of the result of the suit.

Therefore, the Civil Revision Petition is allowed; the order dated 21.08.2018 in I.A.No.614 of 2018 in CMA.No.51 of 2018 is modified; and it is made clear that the suspension of the *status quo* order dated 11.06.2018 in I.A.No.467 of 2018 in O.S.No.295 of 2018 is subject to the condition that the respondents will not claim any equities irrespective of the result of the suit and also subject to the undertaking filed by the respondents that they would not alienate or create any third party interest in the suit schedule property till disposal of the suit. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

14.03.2019.
Msr

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