

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Miscellaneous Appeal No.1039 of 2018

JUDGMENT:-

Heard both sides.

2. This Appeal is filed challenging the order dt.21.08.2018 in I.A.No.269 of 2018 in A.S.No.2 of 2017 on the file of the IX-Additional District Judge at Kamareddy.

3. Appellants herein are plaintiffs in the suit.

4. They filed the said suit for declaration of title and for perpetual injunction in respect of an extent of Ac.20.28 guntas in Kalojiwadi village of Tadwai Mandal, Nizamabad District. The suit was only partly decreed after contest on 20.02.2017 in respect of Ac.6.36 guntas only in favour of the appellants and declaration of title as well as perpetual injunction was granted only to that extent, but not for the balance extent of Ac.13.32 guntas.

5. Challenging the decree and judgment in the said suit, the appellants filed A.S.No.2 of 2017 before the IX-Additional District Judge at Kamareddy.

6. Pending Appeal, they filed I.A.No.269 of 2018 under Order XXXIX Rules 1 and 2 C.P.C. for grant of temporary injunction to restrain the respondents in the appeal from interfering with their peaceful possession and enjoyment over the entire extent of Ac.20.28 gts. This application was opposed by the respondents.

7. By order dt.21.08.2018, the Court below dismissed I.A.No.269 of 2018 holding that the trial Court had granted relief

only to the extent of Ac.6.36 gts., to the appellants and not for the entire extent of Ac.20.28 gts.; and whether the judgment in the suit requires interference or not is to be decided only in the appeal; and therefore, the appellants are not entitled for the relief of temporary injunction pending appeal for the total extent of Ac.20.28 gts., of land claimed by them in the suit.

8. Assailing the same, this Appeal is filed.

9. Counsel for the appellants contended that the finding of the trial Court regarding possession of the appellants over the entire extent of Ac.20.28 gts., is erroneous and that there is evidence on record to show that the respondent is claiming only 1/3rd of the total extent in the suit.

10. I refrain to express any opinion on this aspect of the matter because it is a matter to be gone into at the final hearing of A.S.No.2 of 2017 by the IX-Additional District Judge at Kamareddy and any expression by this Court on the said issue would affect the claims of the parties in the said appeal.

11. However, the Court below could not have dismissed I.A.No.269 of 2018 in its entirety and ought to have confined the relief of injunction which the appellants had obtained from the trial Court at least to the extent of Ac.6.36 gts., while deciding I.A.No.269 of 2018.

12. Therefore, to that extent, the order dt.21.08.2018 in I.A.No.269 of 2018 in A.S.No.2 of 2017 is set aside and the Civil Miscellaneous Appeal is partly allowed confining the temporary injunction granted to the appellant to the extent of Ac.6.36 gts.,

out of Ac.20.28 gts., which is the subject matter of the suit O.S.No.90 of 2012 as directed in the Decree of the trial Court. The IX-Additional District Judge, Kamareddy, shall expedite the hearing of the appeal in A.S.No.2 of 2017.

Consequently, miscellaneous petitions if any pending in the Civil Miscellaneous Appeal shall stand dismissed. No order as to costs.

M.S.Ramachandra Rao, J

27th June, 2019

smr

