

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2971 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.07.08.2014 in C.M.A.No.35 of 2013 on the file of VI Additional District Judge, Siddipet, at Medak District reversing the order dt.16.09.2013 in I.A.No.206 of 2013 in O.S.No.41 of 2013 on the file of the Junior Civil Judge, Gajwel.

2. The petitioners herein are defendant nos.1, 3 and 4 in the above suit.

3. The 1st respondent/plaintiff filed the said suit for a perpetual injunction restraining the petitioners from interfering with their alleged peaceful possession and enjoyment of the plaint schedule properties.

4. Along with the suit, he filed I.A.No.206 of 2013 under Order 39 Rule 1 and 2 C.P.C. for grant of temporary injunction pending suit, restraining petitioners from interfering with his possession and enjoyment of the plaint schedule property.

5. On 21.05.2013, *ad interim* injunction was granted in his favour. The petitioners entered appearance and contested I.A.No.206 of 2013. The trial court on 16.09.2013 vacated the *ad interim* injunction.

6. Challenging the same, the 1st respondent filed C.M.A.No.35 of 2013 before the VI Additional District Judge, Siddipet, at Medak District. There was no injunction in favour of 1st respondent pending the said appeal.

7. Ultimately, on 07.08.2014, C.M.A.No.35 of 2013 was allowed and the lower appellate court granted injunction in favour of 1st respondent restraining petitioners from interfering with his alleged possession and enjoyment of the plaint schedule property.

8. Challenging the same, the present Revision is filed.

9. Heard Sri M. Rajamalla Reddy, counsel for petitioners; and Sri M.A.K. Mukheed, counsel for 1st respondent.

10. The counsel for petitioners contended that 1st respondent had filed O.S.No.60 of 2013 before the Senior Civil Judge, Siddipet, wherein he had sought relief of declaration of title and perpetual injunction, apart from other reliefs against petitioners in respect of the same property; suppressing the same in May, 2013, the 1st respondent filed O.S.No.41 of 2013 before the Junior Civil Judge, Gajwel in the vacation court, and obtained *ad interim* injunction order; that certified copy of the plaint in O.S.No.60 of 2013 was filed by petitioners by way of

additional evidence in C.M.A.No.35 of 2013; it was marked as Ex.R.6 on their side; but the lower appellate court did not advert to this fact and granted *ad interim* injunction in favour of 1st respondent. He contended that since there is no mention in the plaint filed by 1st respondent in O.S.No.41 of 2013 about the O.S.No.60 of 2013 filed by him before the Senior Civil Judge, Siddipet seeking same relief in respect of the same property, the 1st respondent has suppressed this fact and has not approached the Court with clean hands. He further contended that the suit O.S.No.41 of 2013 itself is barred under Order 2 Rule 2 C.P.C., and when the very suit is *prima facie* barred, there is no question of granting any interim relief in O.S.No.41 of 2013 to 1st respondent.

11. On the other hand, the counsel for 1st respondent contended that the 1st respondent is in possession of the plaint schedule property and he has filed substantial material before both the trial court as well as the lower appellate court to prove his possession of the plaint schedule property, and therefore, this Court should dismiss the C.R.P. and direct the court below to decide the suit expeditiously without going into the issues raised by the counsel for petitioner.

12. I have noted the submissions of both sides.

13. It is settled law that relief of injunction is an

equitable relief and the plaintiff who seeks such equitable relief must approach the court with clean hands.

14. The 1st respondent/plaintiff, who had filed O.S.No.41 of 2013 before the Junior Civil Judge, Gajwel in May, 2013 (in the vacation court at Sangareddy), admittedly had also filed O.S.No.60 of 2013 before the Senior Civil Judge, Siddipet in March, 2013 against petitioners in respect of the same property for declaration of his title, for perpetual injunction as well as other reliefs. This fact has been suppressed by 1st respondent in the plaint filed by him in O.S.No.41 of 2013. Therefore, it has to be said that 1st respondent has filed O.S.No.41 of 2013 with unclean hands.

15. Also, since the 1st respondent had already sought injunction against petitioners in O.S.No.60 of 2013, O.S.No.41 of 2013 filed by him subsequently before the Junior Civil Judge, Gajwel is *prima facie* barred by Order 2 Rule 2 C.P.C.

16. It is unfortunate that the lower appellate court did not advert to the fact of the 1st respondent filing O.S.No.60 of 2013 in its order in spite of the fact that a certified copy of the plaint filed therein was marked as Ex.R.6 before the said Court.

17. In this view of the matter, I am of the opinion that the order dt.07.08.2014 in C.M.A.No.35 of 2013 on the file

of VI Additional District Judge, Siddipet, at Medak District cannot be sustained, and it is accordingly set aside. The Civil Revision Petition is allowed. No order as to costs.

18. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-07-2015

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