

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE TWELFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

CIVIL MISCELLANEOUS APPEAL NO: 607 OF 2024

Appeal under Order 43 Rule 1 of CPC against the Order dated 15. 10. 2024 made in I. A. No. 265 of 2024 in O. S. No. 36 of 2024 on the file of the Court of the Learned II Additional District and Sessions Judge, Medhal- Malkajgiri, at Medchal.

Between:

1. THOGITI SRINIVAS, S/o. T. Shanker Chary, Aged 51 years, Occ: Business, R/o. 7- 2- 849, Mankamma Thota, Karimnagar, Telangana State.
2. ALLAM JAYA PRATAP REDDY, S/o. Allam Prakash Reddy, Aged about 53 years, Occ: Business, R/o. H. No. 2- 10-1752, Chaintanyapuri, Karimnagar, Telangana.

...APPELLANTS/PETITIONER PLAINTIFFS

AND

1. S. HARSHAVARDHAN REDDY, S/o. Madhava Reddy, Aged about 62 years, Occ Business, R/o. H. No. 2- 44, Goudelli Village, Medchal Mandal, Medchal- Malkajgiri District - 500014.
2. S. HARIVARDHAN REDDY, S/o. Madhava Reddy, Aged about 58 Years, Occ Business, R/o. H. No. 2- 44, Goudelli Village, Medchal Mandal, Medchal- Malkajgiri District - 500014.
3. D. NAGESHWAR RAO, S/o. Late Narasimha Rao, Aged 47 Years, Occ Personal Assistant to Defendant No. 2, R/o. H. No. 6- 28/1, Vennal Gadda, Suchitra Mandal, Medchal- Malkajgiri District - 500014.
4. GILLELLA ANURADHA, W/o. G. Subhash Reddy, Aged about 50 Years, Occ Housewife, R/o. Goudelli Village, Medchal Mandal, Medchal- Malkajgiri District - 500014

...RESPONDENTS/DEFENDANTS

IA NO: 2 OF 2024

Petition under Order XXXIX, Rule 17(2) R/w Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased To GRANT AD- INTERIM TEMPORARY INJUNCTION ORDERS restraining the Respondents/Defendants, their agents, henchmen, followers, any person or persons claiming through him from interfering with the peaceful possession and enjoyment of Appellants/Plaintiffs over the Petition Schedule Property pending disposal of the Appeal and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case and in the interest of justice.

Counsel for the Appellants : Mr. Sujith Jaiswal

Counsel for the Respondents : ...

The Court delivered the following:

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
CIVIL MISCELLANEOUS APPEAL No.607 of 2024

JUDGMENT: *(per Hon'ble Sri Justice P.SAM KOSHY)*

Heard Mr.Sujith Jaiswal, learned counsel for the appellant. Perused the material available on record.

2. The present Civil Miscellaneous Appeal has been filed by the appellant under Order 43 Rule 1 of Code of Civil Procedure assailing the order, dated 15.10.2024 passed in I.A.No.265 of 2024 in O.S.No.36 of 2024 by the II Additional District and Sessions Judge, Medchal Malkajgiri District at Medchal (for short 'the trial court').

3. The suit substantively is a suit for grant of perpetual injunction against the respondents. In the suit I.A.No.265 of 2024 has been filed seeking for temporary injunction under Order XXXIX Rule 1 and 2. The nature of temporary injunction was seeking for an order of restrain against the respondents from interfering with the peaceful possession of the petitioner enjoyment of the suit schedule property. The suit is in respect of A & B Schedule property.

4. According to the petitioner the dispute with the defendants arose when the petitioner tried to erect fencing around his property which he has

purchased from the defendants vide registered sale deed. The contention of the petitioner is that the sale deed executed by the defendants in favour of the plaintiff/petitioner is not in dispute. The title of the petitioner over the said suit schedule property is again not in dispute. However, still the respondents are interfering with the peaceful possession of the petitioners when they try to erect a fence on the suit schedule property.

5. However, what is culled out from the submissions made by the petitioners is that, in the recent past, the petitioners had filed a writ petition before the High Court of Telangana vide W.P.No.5544 of 2023 which got disposed of on 27.02.2023 with a direction to the Revenue Authorities to carry out the survey of the property which belongs to the petitioners. The substantive prayer in the writ petition was also for conducting of a survey of their self acquired property. The said order till date has not been complied with. The Revenue Authorities have informed the plaintiff/petitioners there is inability in carrying out the survey. No steps further have been taken by the petitioners for the compliance of the writ courts order so far as survey is concerned. In between, the suit was filed, seeking for perpetual injunction. In the suit, the petitioner had sought for a temporary injunction restraining the respondents from interfering with the said property. It is this application for temporary injunction which has now been decided by the trial court which is under challenge in the present Civil Miscellaneous Appeal.

6. Learned trial court in the course of deciding the application has reached to a conclusion that without conducting of the survey of the suit schedule property, it will be difficult in permitting the petitioners for carrying out the fencing work as there appears to be some boundary dispute *inter se* between the petitioners and defendants. Moreover, there is already an order by the writ court so far as conducting of the survey is concerned. Further, the trial court also while disposing of the I.A. for temporary injunction has ordered the petitioners/plaintiff to get the land survey with the appropriate Revenue Authorities and has further directed the respondents to cooperate with the said survey so as to fix the respective boundaries. We are therefore of the considered opinion that the view taken by the trial court while deciding the application for temporary injunction cannot be found fault with as there appears to be a genuine boundary dispute between the plaintiff and the defendants. It is therefore, necessary that so far as the property which has been purchased by the plaintiffs and for which there is already an order by the writ court for getting the property surveyed, should be first got surveyed and the boundaries be demarcated and only then should the petitioner insist upon an order of restrain against the respondents.

7. Reserving the right of the petitioners for availing the same and then approaching the trial court, the instant civil miscellaneous appeal stands rejected.

As a sequel, miscellaneous applications pending, if any, shall stand closed. No order as to costs.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Learned II Additional District and Sessions Judge, Medchal- Malkajgiri, at Medchal. (With records, if any)
2. One CC to Mr. Sujith Jaiswal Advocate [OPUC]
3. Two CD Copies

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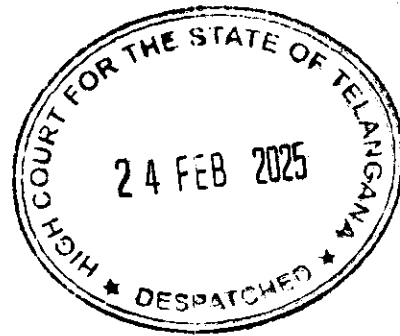
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HIGH COURT

DATED:12/12/2024

JUDGMENT

CMA.No.607 of 2024



REJECTING THE C.M.A.

(5)

kp
12/2/25