

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.346 OF 2015

JUDGMENT:

The unsuccessful appellant/petitioner filed this Civil Miscellaneous Appeal assailing the order, dated 27.02.2015, passed by the learned II Additional District Judge of Kadapa District in I.A.No.1727 of 2014 in A.S.No.17 of 2011 filed under Order XLI Rule 5 and Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for granting temporary injunction restraining the respondents and their men in any way making constructions in the suit schedule property and not to demolish the remaining portion of the suit schedule property, pending disposal of the appeal.

I have heard the submissions of the learned counsel for the appellant. There is no representation of the respondents.

I have perused the material record.

The facts, in brief, are as follows:

The appellant herein, who is the plaintiff, filed the suit for partition against the defendants/respondents herein. On merits, the trial Court had dismissed the suit. Aggrieved of the same, the appellant had preferred the Appeal Suit before the Court below. During pendency of the said appeal, the instant I.A. was filed with the aforementioned prayer. That application was resisted by respondents 1, 4, 7 to 10 by filing a counter. On merits, the trial Court had dismissed the said Interlocutory Application and directed the respondent no.4 to give an undertaking that she would pull down the temporary shed in the property with her own expenses in the event of her failure to succeed in the first appeal before the Court below.

The learned counsel for the appellant would contend that the appellant/plaintiff is entitled to a 1/3rd share in the property and that the property is a house property and that the contesting respondents have

already demolished a portion of the house and are trying to demolish the remaining old constructions to enable them to make new constructions and that if the respondents continue with their said high handed acts, the appellant would be put to irreparable loss in case of his ultimate success in the first appeal and that the appellant has got fair chance of success in the appeal and that the Court below had failed to appreciate the facts properly and had erred in not granting the temporary injunction and in dismissing the application for temporary injunction by directing the respondent no.4 to give an undertaking.

As could be seen from the record, the contention of respondent no.4 is that the existing house is more than 80 years old and that the same is leaking during rainy season and that the house has become unfit for human dwelling and that a portion of the house has already been damaged and that in the place of the existing house only, a temporary shed has been constructed.

Having regard to the facts peculiar to the case, the trial Court, while dismissing the petition, permitted respondent no.4 to raise a shed, viz., a temporary construction, but directed her to give an undertaking to pull down the temporary shed with her own expenses, in the event of her failure to succeed in the appeal pending before the Court below.

Having carefully analyzed the facts and examined the reasoning of the trial Court, this Court finds no reason calling for interference with the order of the Court below more particularly in the light of the fact that the direction given by the Court below to the 4th respondent to give an undertaking to demolish the constructed temporary shed with her own expenses in the event of the appellant succeeding in the appeal, adequately protects the interests of the appellant.

In the result, the appeal is dismissed. However, considering the fact that the appeal is of the year 2011, the Court below is directed to dispose of the appeal as expeditiously as possible, preferably within three months from the date of the receipt of a copy of this judgment. There shall be no order as

to costs.

Miscellaneous Petitions, if any, pending in the appeal shall stand closed.

M.SEETHARAMA MURTI, J

10.06.2015

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