

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Civil Revision Petition Nos.1272 & 1273 of 2023

COMMON ORDER:

Heard learned counsel for the petitioner.

2. Civil Revision Petition No.1272 of 2023 is filed questioning the docket order, dated 27.04.2023, passed in CFR.No.1693 of 2023 in O.S.No.8 of 2022 by the Additional Senior Civil Judge, Narasaraopet, wherein the applications filed for temporary injunction restraining the respondent from demolishing the property that has attached in I.A.No.35 of 2022 was returned. The court below returned the application on the ground that the said property is not the subject matter of the suit. Hence, the application is not maintainable.

3. Civil Revision Petition No.1273 of 2023 is filed questioning the docket order dated 27.04.2023, passed in CFR.No.1694 of 2023 in O.S.No.8 of 2022 by the Additional Senior Civil Judge, Narasaraopet, wherein the application filed for appointment of Advocate Commissioner to inspect

the scheduled property and to note down the demolitions made therein.

4. Since the parties in both the Civil Revision Petitions are one and the same, with the consent of learned counsel for the petitioner, Civil Revision Petition No.1272 of 2023 is taken up for hearing.

5. As on date there is an attachment over the property. The averments made in the affidavit are that the respondent is trying to demolish the existing building in the said property and are attempting to change the nature of constructions. Learned counsel for the petitioner points out that photographs were also filed. It is also submitted that property was also sold subsequent to the attachment.

6. While this Court is not proposing to enter into the merits of the matter, it is clear that if the property is attached, any action taken by the respondent which would diminish the value or reduce the intrinsic one would work against the interest of the plaintiff-petitioner who has secured an attachment order. If Order XXXIX Rule 1 is not strictly applicable, in the opinion of this Court, there is

inherent power against available under Section 151 of Civil Procedure Code for the Court to pass an order which would meet the exigencies of the situation.

7. The petitioner is before the Court stating that value of the property is being diminished and its physical features were being altered. In these circumstances, this Court is of the opinion that the inherent power that is available to the Court can be utilized to pass orders to meet the situation that is envisaged and that is spelt out in the affidavit.

8. The court has a duty to protect an honest litigant and also has the necessary power to prevent the dishonest litigant from taking advantage of the procedures. If the averments mentioned in the affidavit are true, this Court is of the opinion that the trial Court can and must interfere.

9. Therefore, the Civil Revision Petition No.1272 of 2023 is allowed. The Trial Court is directed to number the application if it is otherwise in order and decide the same on its own merits in accordance with law. The opinions expressed earlier in this order are for the purpose of disposing this application only while reiterating that

inherent power can be exercised to meet the situations which are not strictly covered by order XXXIX Rule 1 of Civil Procedure Code. It is hope that the application would be decided on its own merits, in accordance with law.

10. In view of the order passed in Civil Revision Petition No.1272 of 2023, Civil Revision Petition No.1273 of 2023 is also allowed. The trial Court is also directed to number the application and decide the same on its own merits.

11. Learned counsel for the petitioner is permitted to take back the original applications that are filed due acknowledgment after the same substituting with an attested photo copy. There shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending shall stand closed.

JUSTICE D.V.S.S.SOMAYAJULU

Date: 11.05.2023
Note: CC by 12.05.2023
B/o.
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Dated: 11.05.2023

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