

(2007) 02 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No. 444 of 2007 (Arising Out of SLP (Civil) No. 2291 of 2007) and CC No. 10059 of 2006

Pabbathi Venkataramaiah Chetty

APPELLANT

Vs

Pabbathi N. Rathnamaiah Chetty and Others

RESPONDENT

Date of Decision : 02-02-2007

Acts Referred:

Citation : AIR 2007 SC 2333 : (2007) AIRSCW 4038 : (2007) 4 ALD 76 : (2008) 2 ALT 6 : (2007) 2 AWC 1773 Supp : (2007) 3 MLJ 893 : (2007) 1 OLR 802 : (2007) 4 RLW 3183 : (2007) 2 SCALE 537 : (2007) 3 SCC 151 : (2007) 2 SCR 286 : (2007) 3 Supreme 336

Hon'ble Judges : R. V. Raveendran, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : L. Nageshwara Rao, V. Sridhar Reddy and K.V. Kameshwaran, for the Appellant; A. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. Delay condoned. Leave granted.
2. Learned Counsel for the Appellant submitted that the first Respondent is the only contesting Respondent and prayed that notice to Respondent Nos. 2 to 8, who are proforma Respondents, may be dispensed with. Notice to respondents 2 to 8 is accordingly dispensed with.
3. This appeal arises from an interim order of the High Court. The Appellant herein has filed an appeal against the final decree in a suit for partition. In the said appeal, he sought stay of execution of the final decree, which required division of a commercial building which is in the occupation of the Appellant who is running a lodge therein. The High Court, considered the application for stay filed by the Appellant and made an order dated 1.9.2006 directing that the appeal itself should be listed for final hearing after Dassara Vacation and till then, the building shall not be demolished.

4. The said order is under challenge. The learned Counsel for Appellant submits that he is in possession of the suit premises and his prayer was for interim stay of dispossession as he is running a lodge and an order of stay of demolition will not, therefore, protect his rights, pending appeal. On the other hand, the learned Counsel for the first Respondent submitted that the Appellant has been enjoying the suit premises and though the first Respondent is entitled to two third share therein, he has been kept out of possession and he is also not receiving any income therefrom. It is not in dispute that Appellant is running a lodge in the suit premises. The Appeal against final decree filed before the High Court may become infructuous if stay of dispossession is not granted. But at the same time, the interests of first Respondent require to be protected. The learned Counsel for first respondent estimates the minimum loss to his client as Rs. 25000/- per Month.

5. Having regard to the facts and circumstances, interests of justice would be served if the Appellant is directed to pay to the first Respondent Rs. 25,000/- (Rupees twenty five thousand) per month unconditionally during the pendency of the Appeal.

6. We, accordingly, dispose of this appeal as follows:

(i) The interim order dated 1.9.2006 granted by the High Court is modified as follows: "There shall be stay of dispossession of the Appellant during the pendency of the Appeal before the High Court subject to the Appellant paying Rs. 25,000/- per month to the first Respondent, every month commencing from 1.2.2007. If there is any default on the part of the Appellant, the stay order shall stand vacated."

(ii) Nothing stated above shall be construed as expression of any opinion on the merits of the appeal before the High Court or quantum of mesne profits. The order is purely interim in nature, pending disposal of the appeal.

(iii) The High Court is requested to hear and dispose of the appeal expeditiously as already directed by it, in its order dated 1.9.2006

(iv) Parties to bear their respective costs in this appeal.