
(1999) 08 AP CK 0032
In the Andhra Pradesh High Court
Case No : CMA No. 1747 of 1999

Syed Shameer makandar and others APPELLANT
Vs
Syed Ahmed and others RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3

Citation : (1999) 6 ALD 343 : (1999) 5 ALT 406 : (2000) 2 CivCC 227

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. S.V. Bhat, for the Appellant; Mr. S. Sreenivas Bhatt, for the Respondent

Judgement

1. Heard Counsel for both sides. This CMA is directed against the ad-interim order dated 19-5-1999 directing the parties to maintain status quo as on that date while ordering notice on the petition for temporary injunction filed by the respondents-plaintiffs. The order, which is a cryptic order, reads as follows:

"19-5-1999: Orders pronounced.

Perused the affidavit of the petitioner. Also perused the plaint. In the plaint the Government and Madanapalle Municipality are also defendants. Also perused the documents enclosed to the plaint.

Issue urgent notices to the respondents-1 to 5 through Court and RP by 31-5-1999.

In the meanwhile parties are directed to maintain status quo as on today.

Batta shall be paid within 3 days from today."

2. The order is assailed mainly on the ground that it is bereft of reasons and it is contrary to the mandatory provisions of Rule 3 to Order 39 CPC.

3. The material on record reveals that there is a long history preceding the

present suit filed by the respondents. The appellants herein have earlier filed OS No.17 of 1980 initially for declaration of their title to the self same property and also for permanent" injunction against the Municipality. That suit was decreed by the trial Court but on appeal, it was reversed and the second appeal filed by the appellants was allowed and the matter was remanded to the trial Court and the suit is still pending. It appears that subsequently the appellants got the suit amended to incorporate an alternative prayer for recovery of possession also. It also appears that the respondents herein sought to get themselves as parties to the said suit; But their attempts were unsuccessful and the implead petitions filed by them twice were dismissed by the trial Court, and the CRP filed i.e., CRP No. 872 of 1999 in this Court in that behalf was also withdrawn. Subsequently the respondents filed the present suit OS No 32 of 1999 and obtained the impugned order before the vacation Court. Having regard to the long and chequered history of the previous litigation, it Cannot be said that there was such urgency which could not brook a short delay which will be entailed by ordering notice to the defendants. Though it is observed in the impugned order that the documents filed along with the plaint have been perused, no specific reference is made to any particular document and no reasons are assigned as to why the Court thought it fit to grant an ex parte order of status quo before ordering notice to the defendants. It is time and again held that recording of reasons is mandatory and an order granting ex parte order of injunction without recording reasons is void. Courts have also deprecated the practice of granting status quo orders mechanically which are likely to create further complications and lead to a scramble for possession. For the aforesaid reasons, I am satisfied that the impugned order granting an ex parte order of status quo is not justified. Inasmuch as the injunction petition is still pending on the file of the lower Court, it will be appropriate to direct the lower Court to dispose of the injunction petition on merits after hearing both parties. The CMA is accordingly allowed. The impugned order is set aside and the lower Court is directed to dispose of the petition for temporary injunction on merits after hearing both parties as expeditiously as possible. No costs.