

SUPREME COURT OF INDIA

K.M.Pratap

Vs.

K.M.Gourish

C.A.No.749 of 2017

(Kurian Joseph and A.M.Khanwilkar,JJ.,)

20.01.2017

JUDGMENT

Kurian Joseph,J.,

SLP(Civil)No.33484 of 2016

1. Leave granted.
2. The appellant is before this Court aggrieved by the interim order dated 12.09.2016 in Civil Misc. Appeal No. 559 of 2015 passed by the High Court of judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, permitting the respondents to proceed with the construction of the premises in question.
3. It is the apprehension of the appellant that in case the construction, as proposed by the respondents, is permitted, it would complicate the whole dispute, which is the subject matter of O.S.No.1000 of 2014 on the file of the XVI Additional District & Sessions Judge, Malkajgiri, Ranga Reddy District, Telangana.
4. The High Court, taking note of the undertaking given by the respondents that in case ultimately it is held that the disputed property does not fall to the share of the respondents, they will not claim any equity in respect of the construction already made and that they will demolish the construction on their own costs and that they will not be doing any alienation without permission from the Court, permitted the construction to proceed with.
5. When the matter came up before this Court on 25.11.2016, this Court passed the following order :-

"Learned counsel for the petitioner submits that since the property is yet to be divided by meets and bounds, in case the respondents start construction in the meanwhile, it will only create an obstacle- to the proceedings in the partition. Therefore, unless the

property is demarcated and allotted to their shares, the respondents cannot be permitted to carry out the construction in the property. It appears that while passing the interim order the High Court has not taken note of this aspect. In view of the above, issue notice, returnable on 04.01.2017. There shall be stay of operation of the impugned order passed by the High Court, till the next date of hearing

6. Subsequently, it is brought to the notice of this Court that the disputed construction undertaken by the respondents is half way through and it is actually meant to be used as an educational institution.

7. Having extensively heard Mr. Guru Krishna Kumar, learned senior counsel appearing for the appellant and Mr. B. Adinarayana Rao, learned senior counsel appearing for the respondents, we are of the view that the interest of both the parties can be protected by issuing the following clarifications :-

“(a) The respondents shall not create any third party rights in respect of the construction now being undertaken without express permission from the Trial Court.

(b) The building shall not be used for any purpose, even after the completion, without express permission from the Trial Court.

(c) In case it is ultimately found that the property does not belong to the share of the respondents, the respondents shall not be entitled to claim any equity in respect of the construction, which is now being made and that they will remove the entire construction at their own costs. Ordered accordingly.

8. Subject to the above conditions, the interim order passed by this Court on 25.11.2016 is vacated, permitting the respondents to proceed with the construction.

9. We are informed that the trial has already commenced. Therefore, we request both the parties to cooperate for the expeditious disposal of the suit before the Trial Court.

10. With the above observations and directions, the appeal is disposed of.
No costs.