

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2267 of 2014

ORDER:

Heard Sri K.Jyothi Prasad, learned counsel for the petitioners and Sri M.R.S.Srinivas, learned counsel for the respondents.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11-04-2014 in C.M.A.No.1 of 2014 of the Additional District Judge, West Godavari District at Kovvur reversing the order dt.28-11-2013 in I.A.No.26 of 2012 in O.S.No.11 of 2012 of the Junior Civil Judge, Jangareddigudem, West Godavari District.
3. Petitioners herein are plaintiffs in the said suit. They filed the said suit against the respondents for perpetual injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the plaint schedule property and for costs.
4. The Plaint schedule property consists of an extent of Ac.0.97 cts in R.S.No.388/1G of Ketavaram revenue village and District, Jangareddigudem, West Godavari District within the boundaries specified therein.
5. Along with the suit, they filed I.A.No.26 of 2012 under Order 39 Rule 1 and 2 CPC for a temporary injunction restraining the respondents from interfering with their alleged possession and enjoyment of the suit schedule property pending suit.
6. In the affidavit filed in support of the said application, petitioners contended that 1st petitioner is the wife of 2nd petitioner and that the 2nd petitioner was looking after the plaint

schedule property and cultivating the same on behalf of the 2nd petitioner. They contended that 1st petitioner purchased the plaint schedule property from Smt.Pragada Kanthamma (for short 'Kanthamma')under registered sale deed dt.04-05-2011 and that it had been settled in the latter's favour a s *pasupu kunkuma* and she was enjoying the same and also cultivating the same personally. It was contended that Kanthamma had mortgaged the property to the State Bank of India, Jangareddigudem Branch and also obtained a loan and that recognizing her possession and enjoyment over the suit schedule property, the revenue officials had issued pattedar pass book and title deeds in her favour. It was also asserted that possession of the suit schedule property was delivered to 1st petitioner by Kanthamma and so 1st petitioner was conveyed both title and possession over the suit schedule property.

7. According to the petitioners, they were not only cultivating the suit schedule property but also tethering their cattle and keeping the hayrick heap in it. They contended that 1st respondent, who had land to the north of the suit schedule property and had no manner of right over the suit schedule property, highhandedly tried to intrude into the suit schedule property and tried to occupy a portion thereof two days prior to filing of the suit on 31-01-2012 at the instigation of respondent Nos.2 to 5 and so the suit was filed. An *ex parte* ad interim injunction was granted in favour of the petitioners on 31.1.2012.

8. Counter affidavit was filed by 3rd respondent opposing the said application. He contended that the petitioners had executed a document in favour of their daughter and therefore the I.A. was

liable to be dismissed. He contended that the vendor of the petitioners Smt. Pragada Kanthamma had neither title nor possession and so 1st petitioner did not acquire any right, title or possession under the registered sale deed dt.04-05-2011. It was denied that the suit schedule property was settled in favour of Kanthamma towards her *pasupu kunkuma* and they alleged that no document was filed to prove her title. It was also contended that the mortgage in favour of State Bank of India also did not create any title in favour of 1st petitioner's vendor and that pattedar pass book and title deeds were obtained by Kanthamma influencing the revenue officials, that they indicate that they are her ancestral property and therefore she had no title. They alleged that the property in question is only a *puntha* but not cultivable land and therefore the question of petitioners cultivating it did not arise. According to the respondents, from 1960 onwards, the suit schedule property has been a *puntha* used for egress and ingress of men, cattle or carts etc., of neighbouring ryots including the respondents and is also being used for tying cattle and for keeping hayrick and no crop was raised ever therein.

9. According to the respondents, one Pragada Kanthamma was the daughter of Pulipaka Perayya and was the 1st wife of Somayya/Somanna and she is different from the vendor of 1st petitioner, who is also called Kanthamma, and who is the daughter of Dodda Perayya and Dodda Siddamma. The father-in-law of Pragada Somanna/Somayya executed a registered settlement deed dt.30-05-1941 settling the unsurveyed land of Ac.7.60 cts in the

name of Kanthamma; that the said Kanthamma who is the daughter of Pulipaka Perayya married Pragada Somanna and died intestate long prior to 1960 leaving behind two daughters Mangayamma and Venkata Rattamma; and after the death of Kanthamma, these two daughters sold away the land of Kanthamma in favour of several ryots. They marked Exs.R-1 and R-2 registered sale deeds, executed by the two daughters Mangayamma and Venkata Rattamma on 28-07-1996 and 05-07-1960 for an extent of Ac.4.00 cts and Ac.1.80 cts respectively. They contended that the Kanthamma who is the vendor of 1st petitioner is the 4th or 5th wife of Somanna and she had no right, title or possession in the plaint schedule property.

10. Before the trial Court, the petitioners marked Exs.P-1 to P-4 while respondents marked Exs.R-1 to R-4.
11. By order dt.28-11-2013, the trial Court allowed I.A.No.26 of 2012. The trial Court held that even though the respondents had contended that the entire property of 1st wife of Somanna by name Kanthamma, Ac.7.60 cts had been sold away by her two daughters, Exs.R-1 and R-2 filed by the respondents only show the sales to the extent of Ac.5.80 cts and they failed to give details regarding the remaining extent. It therefore held that the entire property of Kanthamma was not sold away by her daughters. It also held that there was no pleading by the respondents that the suit schedule property is part and parcel of the property covered under the registered settlement deed dt.30-05-1941 executed by Pragada Krishnamma in favour of Kanthamma, the wife of Somanna. It held that the presumption

under Section 6 of the AP Rights in Lands and Pattedar Passbook Act, 1971 (for short 'the Act') that every entry in the pattadar passbook shall be presumed to be correct and true unless and until contrary view, would apply. Having regard to the fact that the petitioners had filed Ex.P-2 pattadar pass book issued in favour of 1st petitioner, it also rejected the contention of the respondents that the subject property was a *puntha* and held that they only filed a photo copy of Ex.R-4, S.J.P.Register and it has no value in law. It also rejected the contention of the respondents that certain false entries were made in the certified copy of SJP Register pertaining to R.S.No.388/1A to H by the revenue authorities under the influence of the petitioners on the ground that the respondents had nowhere pleaded that they had initiated proceedings before the appropriate forum challenging the alleged false entries therein. It also referred to Ex.R-3, 10 (1) account, filed by the respondents with regard to R.S.No.388/1 and observed that the said document contained no details of sub-division in R.S.No.388/1 i.e. 388/1A to 1H and therefore Ex.R-3 also does not help the respondents. It held that the respondents had not filed any material to prove their contention that the suit schedule property was not cultivable land and it was *puntha*. It also rejected the contention of the respondents that the petitioners had suppressed facts and held that there is no pleading by the respondents that 1st petitioner had knowledge on the date of filing of the suit that the plaint schedule property was not given by the parents of her vendor Kanthamma, and that even after knowing the said facts, she suppressed the same in her pleadings. It observed that at the time of purchase, in view of Exs.P-3 and P-4, 1st petitioner was satisfied about the

possession and title of the vendor, that she was an innocent purchaser and she had no necessity to enquire whether her vendor is the 1st wife or 2nd wife to her husband. It observed that without challenging the title of the petitioners' vendor over the suit schedule property and without proving that it is a *puntha*, the respondents cannot dispute the title of the petitioners. It also referred to a registered ratification deed Ex.P-5 dt.09-07-2012 wherein the daughters of 1st wife of Somanna, who are the step daughters of petitioners' vendor, ratified the sale transactions in between 1st petitioner and her vendor under Ex.P-1 dt.04-05-2011. It therefore held that petitioners had established *prima facie* case, that balance of convenience is in their favour, and irreparable injury would be caused to them if the temporary injunction is not granted.

12. Challenging the same, the respondents filed C.M.A.No.1 of 2014.

13. By order dt.11-04-2014, the said appeal was allowed and the temporary injunction granted by the trial Court was set aside. The lower appellate court held that Exs.R-1 and R-2 indicated that Somanna had two wives and that 1st wife as well as another wife are both having same name Kanthamma. The vendor of 1st petitioner while executing Ex.P-1 describes herself as the wife of Somanna, aged 70 years, but Ex.P-5 filed by the respondents indicated that there was settlement deed dt.09-06-1941 in favour of 1st wife of Somanna by name Kanthamma and after her death, the executants of Ex.P-5 succeeded to the property of Somanna, and thereafter, it was given to 2nd wife of Somanna by

name Kanthamma towards her maintenance. It held that there was discrepancy between Ex.P-1, which described property as having obtained by Kanthamma towards her *pasupu kumkuma* from her parental family and Ex.P-5, which showed that the property is the *pasupu kumkuma* property of the executants' mother also named Kanthamma. It also took note of the fact that in Ex.R-2, under which Ac.1.80 cts was sold by the daughters of Kanthamma, the eastern boundary was shown as *puntha*. It therefore concluded that petitioners had no prima facie title to the suit schedule property. Although it noticed that Ex.P-2 pattedar pass book was issued in the name of 1st petitioner in October 2011 and Exs.P-3 and P-4 were issued in favour of 1st petitioner's vendor, in support of their plea that the enjoyment of plaint schedule property was by vendor of 1st petitioner and thereafter by 1st petitioner, it held that there was no document filed with regard to actual enjoyment of their property. It also observed that the petitioners had not filed any document showing payment of land revenue either by 1st petitioner's vendor or by the 1st petitioner. It therefore held that entries in Exs.P-2 to P-4, though have some presumptive value of possession, there is some suspicion as to the correctness of the entries therein in view of some interpolation in the SJP Register, and therefore even possession of the property cannot be presumed to be with the petitioners.

14. Challenging the same, this Civil Revision Petition is filed.
15. Learned counsel for the petitioners contended that the view

of the lower appellate Court is contrary to law and the lower appellate Court was not entitled, in a suit for injunction to go into elaborate consideration of the issue of title which can only be done in suit for declaration of title, that too not at an interlocutory stage. He further contended that the trial Court had correctly appreciated the evidence on record and grant a temporary injunction in favour of the petitioners, and in spite of the fact no revenue record had been filed by the respondents in support of their plea that the plaint schedule property is a *puntha* and not cultivable land in contrast to Exs.P-2 to P-4 pattedar pass books filed by petitioners, the lower appellate Court erred in allowing the appeal. He further contended that, assuming for the sake of argument without conceding that there are some doubts about the pattedar passbooks and title deeds, the respondents ought to have questioned the same before the competent authority under the Act and they cannot collaterally attack the said entries in the present suit for injunction. He relied upon the decisions in **Pendoti Lingaiah Vs. Chintha Muthaiah and others** and **B.Narasimha Reddy Vs. Nama Damodhar Reddy and another.**

16. Learned counsel for the respondents, on the other hand, refuted the above contentions and supported the order passed by the lower appellate Court. He relied upon the decision of this Court in **Kashi Math Samsthan and another Vs. Shrimad Sudhindra Thirtha Swamy and another, P.Veerabhadrapa Setty and another Vs. Polliki Chandrahas and Yeluri Vijayabharathi and others Vs. Yeluri Manikyamma and others.**

17. I have noted the submissions of both sides.

18. The point for consideration is whether the order of the lower appellate Court reversing the order of the trial Court can be sustained in the Revision Petition.

19. In **Kashi Math Samsthan and another** (3 supra), the Supreme Court laid down the principles of grant of temporary injunction in a suit. It held:

“16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”

20. In **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs. and others**, the Supreme Court held that as a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue, and that the prayer for injunction will be decided with reference to the finding on possession. It observed that in cases where *de jure* possession had to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. It also held that if there are necessary pleadings regarding title and an appropriate issue relating to title on which parties lead evidence, and if the matter involved is simple and

straight forward, the Court may decide upon the issue regarding title even in a suit for injunction, and that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

21. Keeping in mind this principle, which indicates the scope of the suit for injunction and also keeping in mind that the application being considered by the Court below is only an application for temporary injunction pending suit, I will now consider the contentions of the parties.

22. The petitioners have relied upon Ex.P-1 sale deed executed in favour of 1st petitioner by Kanthamma in support of their contention that 1st petitioner has title to the property. In the counter affidavit filed by the respondents, no doubt a contention was raised that Kanthamma had no title or possession over the property. However, admittedly Ex.P-2 pattadar passbook was issued in favour of 1st petitioner by the revenue authorities and it reflects the possession of 1st petitioner in respect of suit schedule property. The petitioners had also filed Exs.P-3 and P-4, pass book and title deed issued in favour of their vendor Kanthamma. Section 6 of the Act states that entry in the pattadar pass book shall be presumed to be correct and true unless and until contrary to proved. The presumption created by Section 6 of the Act is a rebuttable presumption. Therefore the respondents ought to have filed revenue records such as pahanies in support of their plea that the suit schedule property is a *puntha* and not patta land. The 10 (1) account, Ex.R-3, filed by the respondents does not indicate the various sub divisions in R.S.No.388/1 i.e. 388/1A to 1H. Therefore, the respondents cannot be said to

have discharged presumption under Section 6 of the Act by proving that the plaint schedule property which is in R.S.No.388/1G is a *puntha*.

23. No doubt respondents tried to create a doubt by title of 1st petitioner by contending that the vendor of 1st petitioner was married to Somanna who also had as his first wife, another lady by name Kanthamma and that Ex.P-1 was executed in favour of 1st petitioner not by the said 1st wife Kanthamma but by Somanna's other wife also called Kanthamma. The basis of this assertion is Ex.P-5 executed by the step daughters of the vendor under Ex.P-1 who are the natural daughters of 1st wife Kanthamma and Somanna. In Ex.P-5, it was stated that the father of Somanna had executed settlement deed dt.09-06-1941 in favour of their mother Kanthamma, that on her death, her husband Somanna inherited the property and after the death of Somanna, the property had given to the vendor of 1st petitioner Kanthamma towards her maintenance. Therefore whether the source of title of 1st petitioner is Ex.P-1 or Ex.P-5, either way, *prima facie*, 1st title of 1st petitioner is found established. There is nothing on record to show that the petitioners were aware of any defect in title of 1st petitioner's vendor by name Kanthamma at the time when they obtained Ex.P-1. Therefore, it cannot be contended that the petitioners had suppressed how the property came to belong to Kanthamma, their vendor.

24. Even otherwise, Exs.R-2 and R-3 filed by the respondents only indicate that out of Ac.7.60 cts, Ac.5.80 cts only was alienated by the daughters of Kanthamma, the first wife of

Somanna. There is no pleading by the respondents that the plaint schedule property is part and parcel of the property covered under the settlement deed dt.30-05-1941 in favour of Kanthamma, the first wife of Somanna.

25. Therefore the view of the lower appellate Court that there is a suppression of facts by the petitioners, *prima facie*, does not appear to be correct. I am also of the opinion that the lower appellate Court could not be relied upon the boundary in Ex.R-1 executed on 28-07-1960 in the absence of any material filed by the respondents before the Court to show that as on the date of filing of the suit, the plaint schedule land is a *puntha* as mentioned allegedly in Ex.R-2. Unnecessarily, the lower appellate Court went into the issue of title in depth and perversely ignored Exs.P-2 to P-4 in spite of the presumption under Section 6 of the Act in favour of the petitioners, particularly when Ex.R-3, the copy of 10 (1) account filed by the respondents did not contain the sub divisions of Sy. No.388/1A by merely relying on the certified extract of SJP Register.

26. It is not the case of the respondents that at any point of time the respondents had challenged the entries Exs.P-2 to P-4 before the appropriate authorities under the Act.

27. No doubt in **Yeluri Vijayabharathi and others** (5 supra), this Court had held that the presumption under Section 6 of the above Act is a rebuttable presumption. At the interlocutory stage, the presumption normally cannot be ignored. Whether the defendants in the suit had rebutted the said presumption or not is a matter of trial. In fact, in the above citation, the High Court was dealing with a Second Appeal where judgments had

already been rendered on merits by both the trial and appellate Courts. Therefore, the said decision does not come to the assistance of the respondents.

28. I am also of the opinion that the judgment in **P.Veerabhadrappe Setty and another** (4 supra) relied upon by the respondents also cannot apply since in that case, there was regularization of sale deed under Section 5A of the above Act and under sub Section (4) of Section 5A, the certificate issued by the competent authority under the said provisions would not bind third parties like the defendants but only bind the alienor or transferor or any person claiming interest under him. Undoubtedly in such a situation, where a plaintiff is relying on certificate under Section 5A of the competent authority, he cannot rely on the presumption under Section 6.

29. On the basis of the material available on record, I am of the opinion that the trial Court had correctly appreciated the material on record as well as contention of the parties and that the lower appellate Court, without understanding the scope of a temporary injunction application, unnecessarily went deep into question of title and passed a perverse order.

30. Therefore, the Civil Revision Petition is allowed; the order of the Additional District Judge, West Godavari District, 11-04-2014 in C.M.A.No.1 of 2015 is set aside; and the interim injunction granted in favour of the petitioners in I.A.No.26 of 2012 in O.S.No.11 of 2012 is directed to be maintained till the disposal of the suit. The trial Court shall decide the suit uninfluenced by any of the observations made in its earlier order in I.A.No.26 of 2012 or by the order of this Court in this Revision Petition and

shall decide the same strictly in accordance with law. No costs.

31. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-11-2015

kvr