

**HON'BLE SRI JUSTICE A.V.SESHA SAI**

**CIVIL REVISION PETITION No.4971 of 2013**

**ORDER:**

Plaintiff in O.S.No.114/2013, on the file of the Court of the Family Court-cum-Additional District and Sessions Judge, Karimnagar, is the petitioner in the present revision filed under Article 227 of the Constitution of India.

2. This revision assails the order dated 02.09.2013 passed by the said Court allowing CMA.No.31/2013, thereby setting aside the order of injunction dated 11.07.2013 passed by the Court of the Principal Junior Civil Judge, Karimnagar in I.A.No.314/2013 in O.S.No.114/2013.

3. Heard Sri J.S.Raju, learned counsel for the petitioner and Sri M.Rajamalla Reddy, learned counsel for the respondents apart from perusing the material available before the Court.

4. The facts and circumstances, leading to the filing of the preset revision, are as *infra*:

4.1. The petitioner herein instituted OS.114/2013, on the file of the Court of the Principal Junior Civil Judge, karimnagar, against the respondents herein for perpetual injunction, to restrain the defendants, their agents, servants, assignees or any other person claiming under them from interfering into the possession of the suit schedule property. Along with the said suit, the plaintiff/petitioner herein filed I.A.No.314/2013 for temporary injunction under the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure (for brevity 'the Code').

4.2. Initially, the learned Trial Judge, granted *ad interim* injunction on 27.01.2013 and thereafter the same was made absolute by the learned Principal Junior Civil Judge by virtue of an order dated 11.07.2013. As against the said order of injunction, the respondents herein preferred CMA.31/2013 under the provisions of Order 43 Rule 1 of the Code, on the file of the Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar. The learned Judge, Family Court-cum-Additional District Judge, by way of an order dated 2.09.2013, allowed the said appeal, setting aside the order of injunction granted by the trial Court in I.A.No.314/2013.

5. Calling in question, the validity and the legal sustainability of the said order passed by the learned appellate Judge in CMA.No.31/2013 dated 02.09.2013, the present revision has been filed.

6. It is contended by the learned counsel for the petitioner that the order passed by the learned District judge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 39 Rules 1 and 2 of the Code. It is also contended by the learned counsel that the learned District Judge is not justified in reversing the order passed by the trial Court having regard to the facts and circumstances of the case and the evidence let in by the plaintiff/petitioner herein. It is also submitted by the learned counsel for the petitioner that the learned District Judge grossly erred in disturbing the well considered findings recorded by the trial Court. It is also argued by the learned counsel that the appellate Court grossly erred in ignoring Ex.P.3 proceedings dated 01.07.1998 of the Revenue Divisional Officer, Karimnagar. It is further argued by the learned counsel that the appellate Judge totally erred in relying upon Ex.R.1 which is the final decree in O.S.No.24/1997.

7. Per contra, it is contended by the learned counsel for the respondents that the order passed by the appellate Judge is in accordance with the provisions of Order 39 Rules 1 and 2 of the Code and the order impugned does not suffer from any material irregularity nor any jurisdictional error, as such, the present revision is not maintainable before this Court under Article 227 of the Constitution of India. It is further submitted that the documents filed by the respondents herein clearly establish the possession and enjoyment of the respondents herein in respect of the suit schedule property. The learned counsel further submits that the learned District Judge is perfectly justified in reversing the order of injunction passed by the trial Court having regard to the voluminous documentary evidence made available by the respondents herein.

8. In the above back ground, now the issues which this Court is called upon to answer in the present revision are:

1. Whether the order under revision is in conformity with the provisions of Order 39 Rules 1 and 2 of the Code of the Civil Procedure? and
2. Whether the impugned order warrants any interference of this Court under Article 227 of the Constitution of India?

9. The case of the petitioner herein, as per the material available before the Court, is that he purchased the schedule property by way of Ex.P.4 sale deed bearing Doc.No.1416/2013. In order to substantiate his case, in the present I.A.,

plaintiff/petitioner herein filed Exs.P.1 to P.8.

10. On the contrary, it is the case of the defendants/respondents herein that pursuant to the compromise decree in O.S.No.24/1997 dated 24.01.2002, one Madishetty Thapalu and Madishetty Narsaiah together got 13 guntas of land out of 30 guntas of land and from whom one Kunduru Laxma Reddy s/o Pratap Reddy purchased 1421.75 sq yards and obtained Registered Agreement of Sale-cum-General Power of Attorney vide Doc No.3191/2003 dated 15.04.2003 and the said Madishetty Narsaiah and Madishetty Thapalu sold the remaining plot to one Mr.B.Rajakumaraiah and the said Kunduru Laxma Reddy sold the entire land of 1421.75 sq yards to the first defendant and his father by name Sriramulu and to the third defendant by virtue of registered sale deed bearing

Doc.No.5157/2003 dated 16.06.2003. It is also the case of the defendants that the second defendant purchased Ac.0.6 guntas of land from one Manthani Manikyamma through registered sale deed bearing Doc.No.2802/2003 dated 28.03.2003 and the first defendant also purchased another Ac.0.6 guntas of land from one Oddapally Venkamma through Agreement of Sale-cum-General Power Attorney through Doc. No.3528/2003 dated 24.04.2003 and subsequently first defendant sold the said plot of Ac.0.6 guntas to the third defendant by way of registered sale deed bearing Doc.No.4322/2003 dated 21.05.2003. The defendants are claiming exclusive possession and enjoyment over the said properties pursuant to the documents referred to above.

11. The primary purpose of granting interim relief under Order 39 CPC is to evolve a workable formulae by keeping in mind the *pros and cons* of the matter and by striking a delicate balance between two conflicting interests namely injury and prejudice likely to be suffered by the plaintiff in the event of refusal of the relief and the injury likely to be experienced by the defendant in the event of granting the relief. It is well settled and established proposition of law that as a matter of course a person is not entitled for the relief of injunction and discretion shall be exercised by the Court in favour of the plaintiff in the event of the same being denied it would result in any irreparable damage to the person asking for and such relief can be granted in order to meet the ends of justice.

12. The Courts, while considering the applications filed under Order 39 Rules 1 and 2 of CPC are required to examine as to whether the three indispensable ingredients, namely prima facie case, balance of convenience and irreparable loss and injury are

present in the case of the person applying for. The issues in the instant case are required to be examined in the light of the above aspects.

13. The learned trial Judge, refused to take into consideration Ex.R.1 final decree in O.S.No.24/1997 on the ground that the same is devoid of any particulars. Eventually, the learned trial Judge came to a conclusion that none of the documents filed on behalf of the defendants show their possession over the suit land as on the date of the suit and allowed the injunction application filed by the petitioner herein. As against the order of injunction granted by the trial Court, the defendants carried the matter in CMA.No.31/2013, on the file of the Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar. The learned appellate Judge, after thoroughly and meticulously considering the documents filed by the defendants/respondents herein including Exs.R.1, R.7 to R.9, which are final decree in O.S.No.24/1997 the revenue entries and the mutation proceedings, reversed the order passed by the trial Court by assigning cogent and convincing reasons.

14. A perusal of Ex.R.1 filed by the respondents herein clearly and *prima facie* strengthens the case of the respondents herein. In the same manner Ex.R.7 certified copy of the Register showing changes issued by Deputy Tahasildar, Karimnagar for the year 2003-04 and Exs.R.8 and R.9 mutation proceedings issued by the Mandal Revenue Officer, Karimnagar dated 19.10.2003 and 26.10.2003 respectively *prima facie* show the possession of the respondents herein with regard to the subject property. All those documents filed by the respondents are admittedly subsequent to Ex.P3 dated 1.7.1998 on which the petitioner places strong reliance.

15. In the considered opinion of this Court, the petitioner herein is not successful in proving the existence of three necessary ingredients i.e., *prima facie* case, balance of convenience and irreparable loss in his favour as required under Order 39 Rules 1 and 2 of the Code. It is also a settled and well established proposition of law that unless the order impugned suffers from patent perversity and jurisdictional error, the jurisdiction of this Court under Article 227 of the Constitution of India cannot be permitted to be invoked. This Court also does not find any such infirmities in the order passed by the learned District Judge which warrants interference of this Court under Article 227 of the Constitution of India.

16. For the aforesaid reasons and having regard to the reasons recorded by the learned District Judge, this Court is of the opinion that there are no merits in the

present Civil Revision Petition and the same is liable to dismissed.

17. Accordingly, the Civil Revision Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 15.4.2015

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HON’BLE SRI JUSTICE A.V.SESHA SAI

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**CIVIL REVISION PETITION No.4971 of 2013**

**Date : 15.4.2015**

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**Between:**

Gaddam Vilas Reddy, S/o. Raji Reddy. ... Petitioner

and

Musthyala Ramesh, S/o Sriramulu

and two others.

... Respondents

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**HON’BLE SRI JUSTICE A.V.SESHA SAI**

PD judgment in

**CIVIL REVISION PETITION No.4971 of 2013**

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