

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.4139 OF 2015

ORDER:

This revision petition is filed under Article 227 of the Constitution of India to set aside the interim injunction passed by the Junior Civil Judge, Bodhan on 10.02.2015 in I.A.No.238 of 2014 in O.S.No.72 of 2014, which was confirmed by the VII Additional District Judge, Bodhan in C.M.A.No.1 of 2015 vide order dated 28.07.2015.

2. The revision petitioners are respondents before the trial Court and appellants before the appellate Court.

3. The respondent herein filed I.A.No.238 of 2015 in O.S.No.72 of 2014 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure to grant temporary injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the land admeasuring Ac.0.17 Guntas in Survey No.1960/A situated at Salooru Village Shivar, Bodhan, Nizamabad District stating that the respondent herein purchased the suit schedule property from one Chidarapu Sayanna and Budde Shivaji under three registered sale deeds vide bearing document Nos.648/87, dated 27.03.1987, 829/2005, dated 25.02.2005 and 3924/2007, dated 15.05.2007. The land admeasuring Ac.0.08 guntas in Survey No.1960/A, Ac.0.04 1/5 guntas in Survey No.1960/A and Ac.0.04 guntas in Survey No.1960/E i.e. total land admeasuring Ac.0.17 guntas is in one block.

4. Thereafter, the name of the respondent herein was mutated in revenue records and obtained pattadar passbook and since then he is in possession and enjoyment of the property. As the petitioners

herein made an attempt to interfere with the possession of the respondent herein, he sought interim injunction as aforesaid.

5. The petitioners herein filed counter before the trial Court denying the ownership and contended that originally one Rajalingu, who is their great grand father, was the owner of the land admeasuring Ac.0.26 guntas in Survey No.1960. The land was divided into four shares i.e. Ac.0.06 guntas each to Maidapu Sayanna, Chidrapu Sayanna, Maidapu Bhoomavva and Maidapu Gangaram and Ac.0.02 guntas was left towards bunds. The pahanies for the year 1994-95 shows that Smt Bhoomavva was the owner of Ac.0.06 guntas in Survey No.1960/AA and Gangaram was the owner of Ac.0.06 guntas in Survey No.1960/E. They also stated that the encumbrance certificate dated 15.03.2014 shows that Maidapu Sayanna (Chidrapu Sayanna) was the owner of Ac.0.06 guntas in Survey No.1960 only. Maidapu Sayanna (father of the petitioners herein) was the owner and possessor of Ac.0.06 guntas in Survey No.1960/E as per pattadar passbook. The said Maidapu Sayanna died on 07.07.1998 leaving the petitioners herein as legal heirs. As such they succeeded the said land and became owners of the property.

6. During the course of enquiry, no oral evidence was adduced by both parties, but marked Exs.P.1 to P.13 on behalf of the respondent herein and Exs.R.1 to R.7 on behalf of the petitioners herein before the trial Court.

7. Considering the oral and documentary evidence on record, the trial Court granted temporary injunction in favour of the respondent herein restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the schedule property.

8. Aggrieved by the order and decree passed by the Junior Civil Judge, Bodhan, the petitioners herein preferred C.M.A.No.1 of 2015 before the VII Additional District Judge, Bodhan and the said CMA was dismissed concurring with the findings recorded by the trial Court.

9. Aggrieved by the said dismissal order, the present revision petition is filed.

10. Learned counsel for the petitioners contended that taking advantage of the interim injunction granted by the trial Court, the respondent herein interfering with the peaceful possession and enjoyment of the property belongs to the petitioners herein without any manner of right or title.

11. Learned counsel for the respondent argued totally supporting the order passed by the trial Court and contended that the scope of revision is limited while exercising power under Article 227 of the Constitution and this Court cannot look into the fact in issue since the power under Article 227 of the Constitution is supervisory in nature. Hence, prayed for dismissal of revision petition.

12. Considering rival contentions and perusing the order under challenge, the point that arises for consideration is:

Whether the trial Court while passing the order exercised discretion which is not conferred on it or failed to exercise its jurisdiction which conferred on it, if so, the order under challenge is liable to be set aside?

13. Before proceeding to the real controversy between the petitioners and the respondent based on the material, I feel that it is appropriate to advert to Article 227 of the Constitution, so as to limit the decision in this petition to the grounds available under Article 227 of the Constitution. Article 227 of the Constitution reads as

under:

Every High Court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may--

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or Tribunal constituted by or under any law relating to Armed Forces.

14. A bear look at Article 227 of the Constitution, that the powers of the High Court are limited and they are supervisory in nature. In one of the judgments of the Apex Court in **Essen Deinki v. Rajiv Kumar** ^[1] discussed about the jurisdiction of the High Court under Article 227 of the Constitution and held that the jurisdiction of the Court under Article 227 of the Constitution is limited and restrictive in nature, revisional and not appellate and finding of fact cannot be gone into normally. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature and it is so exercised in the normal circumstances for want

of jurisdiction, errors of law, perverse findings and gross violation of principles of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof, or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for. Therefore, the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

15. In another judgment of the Apex Court in **Nibaram Chandra Bag v. Mahendra Nath Ghughu**^[2], it is ruled that the Court has been rather categorical in recording finding that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. In view of law declared by the Apex Court in the two judgments referred above, the powers of the High Court under Article 227 of the Constitution are limited.

16. But here the trial Court more particularly on documentary evidence concluded that the respondent herein is in possession and enjoyment of the schedule property and recorded a specific finding that the respondent herein proved *prima facie* case and balance of convenience is also in his favour and also found that the respondent will be put to irreparable loss in case no injunction is granted and the same is confirmed by the appellate Court.

17. The only apprehension of the petitioners herein is that the respondent herein trying to interfere with the possession and enjoyment of the property and proceeding with the construction over the property. In fact, the petitioners herein did not file any petition before the trial Court for grant of any injunction restraining the respondent herein from raising any construction and in the petition filed by the respondent herein under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, injunction cannot be granted in favour of the petitioners herein, who were respondents before the trial Court. Therefore, the apprehension of the petitioners is misconceived and no order can be passed against the respondent herein restraining him from raising any construction in the schedule property in the absence of any counter claim or separate application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Concurrent findings of fact recorded by the Courts below, the High Court cannot not disturb such concurrent findings of fact unless shown to be perverse, or not based on any evidence or based on improper appreciation of evidence, but the petitioners failed to establish any of the grounds to enable this Court to interfere exercising jurisdiction under Article 227 of the Constitution of India. Hence, the petition is without any merit and liable for dismissal.

18. In view of the foregoing discussion, I find no grounds warranting interference of this Court and the revision petition is devoid of merits and deserves to be dismissed.

19. Accordingly, the civil revision petition is dismissed confirming the order dated 28.07.2015 passed by the VII Additional District Judge, Bodhan in C.M.A.No.1 of 2015. There shall be no order as to costs.

20. Miscellaneous petitions, if any, filed in this appeal shall stand

closed.

M.SATYANARAYANA MURTHY,J

26.10.2015

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[\[2\]](#) AIR 1963 SC 1895