THE HON'BLR SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL NO.372 OF 2008

JUDGMENT:

This Civil Miscellaneous Appeal under XLIII Rule 1 of the Code of Civil Procedure ("the code" for brevity) is directed against the order dated 18.04.2008 of the learned Additional Senior Civil Judge, Tirupati, passed in I.A.No.183 of 2008 in O.S.No.82 of 2008 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code seeking temporary injunction restraining the respondents/defendants, their men, agents and subordinates from in any way interfering with the plaintiffs' peaceful possession and enjoyment of the land admeasuring Acs.17.04 cents in survey no.378 of Annasamipalle of Renigunta Mandal, more fully described in Schedule A to Schedule D annexed to the plaint and the petition.

2. I have heard the submissions of the learned counsel for the plaintiffs-appellants ("the plaintiffs" for brevity) and the learned Government Pleader for the defendants-respondents ("the defendants" for brevity) and I have perused the material record.

3. The facts relevant for consideration, in brief, are as follows:

The plaintiffs brought a suit against the State and its officials/defendants 1 to 3 for a perpetual injunction. Along with the suit, the plaintiffs had filed the aforementioned application for a temporary injunction. That application was resisted by the defendants and the said application was dismissed on merits by the trial Court. Therefore, the plaintiffs are before this Court.

4. The case of the plaintiffs, in brief, is this: 'The suit if field for perpetual injunction. The plaintiffs are closely related to each other. The plaint schedule property originally belonged to private individuals, viz., T. S. Ramadass, K. Murugesan, V. R. Indrani and V. R. Rani. The said persons were the original absolute owners of the said property and were in possession and enjoyment of the same without any objection from any quarter including the Governement. The above said four persons had sold their respective shares, more fully described in A-D schedules of the plaint, to the plaintiffs on 30.03.1998 by way of four registered sale deeds under exhibits A1 to A4. Since then the plaintiffs were and are in possession and enjoyment of the schedule lands. Earlier, the names of the vendors of the plaintiffs were entered in the revenue records. The vendors of the plaintiffs had obtained pattadar passbooks in respect of the schedule lands. When the plaintiffs had sought for issuance of pattadar pass books in their names, they had also sought for condonation of delay in seeking pattadar pass books. However, that petition was dismissed; and, a revision filed before the Director of Settlements was also dismissed. The said appeal was dismissed for improper prosecution as the 3rd defendant had already granted pattadar passbooks. However, the petitioners-plaintiffs are contemplating to take steps to assail the above said orders before the Commissioner of Land Revenue. However, having once issued pattadar passbooks in respect of the plaint schedule property and having recognized the possession of the plaintiffs, the Government, even assuming for a moment that the suit schedule land is a Government property, cannot interfere with the possession of the plaintiffs. The Government has to obtain possession of any Government land only as per the provisions of the Assigned Lands Act. When the Government officials made an attempt to dispossess the plaintiffs, they had filed a Writ Petition in W.P.No.24348 of 2006 and had obtained status quo orders. Later that Writ Petition was disposed of 21.01.2008 giving liberty to the plaintiffs to initiate appropriate proceedings as per law. The possession of the plaintiffs over the schedule land is legal and the Government cannot forcefully dispossess the plaintiffs from the said property. Therefore, the suit and the subject petition for temporary injunction are filed.

5. On the other hand, the case of the Government, in brief, is this.

The case of the plaintiffs is false. The revenue entries being rleid upon by the plaintiffs were cancelled and the plaintiffs' vendors had no right, title and possession over the property. The plaintiffs did not acquire and title or rights over the schedule property. The entire land in an extent of Acs.17.04 cents in Survey No.387 is classified as 'Thaka Gayalu' (UAW) as per the village accounts. One V. K. Padmavathamma had earlier claimed before the Settlement Officer of Nellore that she is entitled to be declared as the owner of the property. She had also requested for condonation of a delay of 13 years. However, the Settlement Officer had rejected her petition for condonation of delay. Her revision before the Special Commissioner and Director of Settlements was pursued by her legal heirs. However, that revision was also dismissed. The possession of the land was taken over by the Government on 09.09.2003 pursuant to the provisions of the Estate Abolition Act, 1948 and the orders of the said authority. Thus, the suit schedule property is in the lawful possession of the Government. The Government officials having found that the entries in the revenue records were wrongly made had cancelled the entries as the said entries were found to have been made wrongly without the valid attestation of the competent authority. Before cancelling the entries, as notices could not be served personally on the plaintiffs, who are residing elsewhere, service of notices was affected by substituted service and a copy of notice was also publicized by beat of tom tom and also by affixture in the temple premises of the village and on the notice board of the gram panchayat office of Venkatapuram. The Government has not changed the classification of the suit land from UAW to AWD i.e., from unassessed waste to assessed waste dry and had not granted any pattas to the plaintiffs or to anybody as per the revenue records. The land was situated near to Renugunta and was, therefore, selected for the provision of the house sites to the beneficiaries under the Indiramma Programme. Accordingly, 400 house site pattas were issued to the beneficiaries of Renugunta panchayat and the assignees are in possession of the plots allotted to them. Therefore, when the suit schedule land is a Government land and the unauthorised entries in the revenue records were cancelled and the plaintiffs are not in possession and when no ryotwari pattas were granted to the plaintiffs, the plaintiffs or their vendors cannot claim any title or possession over the property. Hence, the plaintiffs are not entitled to any temporary injunction.

6. During the course of enquiry, apart from the title deeds and pattadar passbooks, certain copies of revenue records like adangals were exhibited on the side of plaintiffs. In all, exhibits A1 to A27 were marked. On the side of the Government, exhibits B1 to B6 were marked. On merits, the trial Court had dismissed the application for temporary injunction filed by the plaintiffs.

7. The learned counsel for the appellants would contend that the plaintiffs had produced exhibits A1 to A4 registered sale deeds and also the pattadar passbooks and title deeds of their vendors in respect of the schedule land besides copies of revenue records including copies of adangals showing their possession and that on mere consideration of the fact in regard to cancellation of entries in the revenue records by the Government unilaterally and for the reason that the Writ Petition filed by the plaintiffs was dismissed directing the parties to approach a proper forum, the Court below has erroneously dismissed the application for temporary injunction though the plaintiffs had established their lawful possession and a *prima facie* case besides balance of convenience in their favour and also the contention that if the temporary injunction is not granted, serious loss would ensue. The entries in revenue records were unilaterally cancelled. The cancellations proceedings, if any, are not binding on the plaintiffs. When once pattadar pass books were issued to the vendors of the plaintiffs and their names finds place in revenue records, the Government cannot attempt to take forceful possession without following the procedure established by law even assuming for a moment that the schedule lands are Government lands.

8. On the other hand, the learned Government Pleader for respondents, while reiterating the facts stated supra, had contended as follows: - ‘The plaintiffs who had claimed to have purchased the land under exhibits A1 to A4-sale deeds had failed to establish as to how their vendors have got the property. When the plaintiffs had sought for issuance of pattadar pass books in their names, they had also sought for condonation of delay in seeking pattadar pass books. However, that petition was dismissed; and, a revision filed before the Director of Settlements was also dismissed. No further steps were taken to assail the said order and the said order has become final. One V. K. Padmavathamma had earlier claimed before the Settlement Officer of

Nellore that she is entitled to be declared as the owner of the property. She had also requested for condonation of a delay of 13 years. However, the Settlement Officer had rejected her petition for condonation of delay. Her revision before the Special Commissioner and Director of Settlements was pursued by her legal heirs. However, that revision was also dismissed. The possession of the land was taken over by the Government on 09.09.2003 pursuant to the provisions of the Estate Abolition Act, 1948 and the orders of the said authority. The land was plotted and about 400 house site pattas were granted to deserving landless persons of weaker sections under the Indiramma programme and that the plaintiffs have no possession much less lawful possession and that the assignees are in possession. The wrong entries made in the revenue records were cancelled by following the procedure established by law.

9. I have bestowed my attention to the facts and I have noted the submissions.

9.1 The pleadings and the contentions of both the sides are already stated supra, in detail. The plaintiffs place reliance on exhibits A1 to A4 sale deeds executed by their vendors in whose names the pattadar pass books were issued and whose names find place in the revenue records, though the revenue entries were later cancelled. The Government contends that the request of the plaintiffs for grant of pattadar pass books was rejected while refusing to condone the delay in seeking the said relief and that the orders in that regard have become final and that the entries in the revenue records which were wrongly made without proper attestation of the competent authority were cancelled by following the procedure established by law and that as per the orders of the competent authority and the provisions of the Estate Abolition Act, the possession of the land was taken over by the Government and the land was divided into plots and pattas were granted to 400 eligible persons of weaker sections of the same panchayat and that the assignees are in possession.

9.2 At the outset, it is to be noted that except in the Writ Petition for a limited time, there is no order of injunction or *status quo* in favour of the plaintiffs though the suit was instituted in the year 2008. Be that as it may, it is for the plaintiffs to prove their lawful possession as on the date of the suit and at all relevant times. The entries in the revenue records, as per settled law, do not confer or take away title of the rightful owner. The Government has cancelled the revenue entries on which the plaintiffs are relying stating that they are erroneously made without any attestation by the competent authority. Therefore, it is for the plaintiffs to assail the orders cancelling the revenue entries by following the procedure established by law. Though the plaintiffs claim that their vendors are the owners of the property, *prima facie*, the plaintiffs could not show as to how their vendors acquired title. revenue records, the land was classified as "Thaka Gayalu" and exhibit B1-fair adangal placed reveals the said fact. In the absence of proof of *prima facie* title of the vendors of the plaintiffs, by virtue of exhibits A1 to A4 the plaintiffs cannot sustain their case of lawful possession over the schedule lands. Except those sale deeds and the copies of the revenue records, which according to the Government are cancelled, there is no other evidence to show the possession of the plaintiffs over the suit land. The Court below had observed that the copies of adangals which were obtained by the plaintiffs were not granted by competent persons who are enjoined with the duty to issue such copies. The land being a vast extent of land, the plaintiffs ought to have pleaded and *prima facie* established as to how they are enjoying the land. A careful perusal of the material record would show that the plaintiffs could not *prima facie* show that they are in actual possession of the suit land and thus could not establish a *prima facie* case, which is a *sine qua non* for granting a temporary injunction. The plaintiffs have merely stated that they are contemplating to assail the orders of the Special Commissioner and Director of Settlement before the Board of Revenue. But, no such steps were taken. Apart from exhibit B1-fair adangal, exhibit B2-true extract of No.3 adangal, exhibit B3-lay out sketch, exhibit B4-cancellation orders issued by MRO, Renugunta, and exhibit B5-photographs dislodge the pleaded case of the plaintiffs. Therefore, the trial Court was justified in holding that the plaintiffs failed to establish a *prima facie* case and that when the said ingredient was not established, the plaintiffs are not entitled to any injunction. Viewed thus, this Court finds that there are no merits in the appeal.

10. In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SEETHARAMA MURTI, J)

29th June 2015
RRB