

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.5464 of 2010

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Date:19.01.2015

Between:

Mohd. Akbar Pasha

..... Petitioner.

AND

Syed Waris Uddin Naveed

.....Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.5464 of 2010

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ORDER:

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This revision is preferred against order dated 11-08-2010 in CMA No.783/2009 on the file of I Additional District Judge, Ranga Reddy whereunder order dated 24-10-2009 in I.A.No.1903/2009 in O.S.No.1571/2009 on the file of VIII Additional Senior Civil Judge, Ranga Reddy was reversed.

2. The appellant herein is defendant in the above referred

suit and respondent herein is plaintiff and they are hereinafter referred to as plaintiff and defendant as arrayed in the suit.

3. Plaintiff filed O.S.No.1571/2009 to restrain defendant by way of perpetual injunction from interfering with peaceful physical possession and enjoyment of the suit schedule property. According to plaintiff, suit schedule property is part and parcel of property comprising of road running from north to south of 150 feet in length and 15 feet in width and connecting main road in the north existing between Survey Nos.126 part & 128 of Kismathpur Village, Rajendra Nagar Mandal, Ranga Reddy District. According to plaintiff, he is owner and possessor of Ac.0-30 guntas of land in Survey No.126 part having purchased under a registered sale deed dated 24-11-2005 and that there is a fifteen feet wide road running from North to South of plaintiff's property and the said road is being used since times immemorial for ingress and egress and it is the only approach road to reach the main road and the defendant herein is causing obstruction and threatening the plaintiff with dire consequences from using the said road and that the defendant has no right title or interest in respect of the road property shown in the plaint schedule, therefore, he has to be restrained by way of permanent injunction. Plaintiff filed I.A No.1903/2009 for grant of interim injunction pending disposal of the suit. Defendant resisted the claim of the plaintiff and contended that there is no existence of suit schedule property as shown

by the plaintiff and claimed by the plaintiff. According to defendant, the entire schedule property is a created one to gain access through the property of the defendant. He further contended that there as no road, path or passage through Survey No.128 and the entire plaint schedule property is an imaginary one. According to defendant, Survey No.126 has independent approach from other sides of the Survey No.126 and Survey No.128 is an independent property and the ingress and aggress claimed by plaintiff is not at all in existence. According to defendant, plaintiff illegally constructed a gate in the property showing opening towards Survey No.128 just recently, to give a colour of existence or usage from a long time, plaintiff has fixed an old gate and thereby, created false evidence. According to defendant, he was not in the country as on the alleged date of threatening and there is no such road in the village map and the plaintiff by virtue of this interim relief wants to create a new way from the property of the defendant and the defendant has got every right to protect his property and the plaintiff is not entitled for the interim relief as claimed.

4. On these contentions, the trial Court by marking seven documents on behalf of the plaintiff and six documents on behalf of the defendant dismissed the interim injunction application holding that the plaintiff failed to make out a *prima facie* case. Aggrieved by the dismissal of the interim application, plaintiff preferred appeal to the District Court and I Additional District Judge, Ranga Reddy, on a reappraisal of

the material, allowed the appeal and granted interim injunction. Aggrieved by which, defendant preferred present revision.

5. Heard both sides.

6. Both side advocates argued at length in support of respective contentions of their clients.

7. Advocate for defendant mainly focused on Ex.R3, a village map to support his contention that plaint schedule is an imaginary one and there is no road as claimed by the plaintiff to the west of the defendant and to the north of the plaintiff. He further focused on Ex.R5, which is a passport of the defendant to show that the allegation of plaintiff that the defendant interfered on 14-08-2009 is incorrect.

He submitted that trial Court rightly considered the material on record and refused to grant injunction, but the appellate Court, on an erroneous appreciation of facts and on surmises, granted injunction, therefore, the order of the appellate Court is to be set aside.

8. On the other hand, Advocate for plaintiff submitted that the document Ex.P6, which is a Panchanama, dated 12-10-1999, prepared by Survey Authorities would clinchingly show existence of plaint schedule property, which is supported and corroborated with the photographs-Exs.P3 to P5 and the appellate Court rightly granted injunction and that there are no grounds to interfere with the findings of the

appellate Court.

9. Now the point that would arise for my consideration in this revision is whether the orders of the Courts below are legal, proper and correct?

10. **Point:-** It is the specific case of plaintiff that the plaint schedule property is in existence since times immemorial and it is being used as ingress and egress and the plaintiff was also using it, but defendant interfered with that enjoyment particularly on 14-08-2009 and that made him to file the suit. On the other hand, defendant specifically contended that plaint schedule is an imaginary one and there is no such road as pleaded by the plaintiff. So the initial burden is on the plaintiff to show the existence of road as pleaded by him. For this, plaintiff relied on Exs.P1 to P7. Ex.P1 is the rough sketch prepared by the plaintiff, which is a self serving document, Ex.P2 is the sale deed through which the plaintiff purchased the property, Exs.P3 to P5 are the Photographs, Ex.P6 is a Panchanama dated 12-10-1999 and Ex.P7 is layout granted by the Gram Panchayat. As against this, defendant relied on Exs.R1 to R6, which are; registered sale deed in favour of the defendant, registered sale deed of defendant's vendor, village map, approved plan issued by the Gram Panchayat, copy of the passport of the defendant, and water supply bill showing that proof of the address respectively. Now it has to be seen whether plaintiff has made out any *prima facie* case through Exs.P1 to P7.

Ex.P1 is a self made document, in Ex.P2, there is no reference about this road as claimed by the plaintiff, Exs.P3 to P5 are the Photographs. The main important document is Ex.P6. In Ex.P6, there is a reference about a road towards South and basing on this, plaintiff contended that road is the suit property. Defendant filed village map, which is marked as Ex.R3. As seen from this, there is no road towards North of Survey No.126, but it is towards South, which is abutting Survey No.125. Even in Ex.P6-Panchanama, a reference was made to this road only, because it is clearly mentioned that the road towards south adjacent to Survey No.125, where this 126 & 128 join, but according to plaintiff and plaintiff plan, the road referred in the panchanama is shown towards north of Survey No.126. The other document relied on by plaintiff is the proposed layout, but this also no way support the road as pleaded by plaintiff. When the village map would only refer to a road towards north of Survey No.128 and South of Survey No.126. There is no road in between Survey Nos.128 & 126 and these two are shown as abutting lands. According to plaintiff, there is a 15 feet road in between these two survey numbers, but it is not at all supported by village map, which is a authenticated document. But the appellate Court without considering this, simply relying on the gate shown in the photograph imagined existence of a road.

As rightly pointed out by Advocate for defendant even from the photographs, it is clear that there is no signs of usage of this gate through which plaintiff claims access. According to

plaintiff, this is the road for ingress and egress from times immemorial, but in the sale deed through which plaintiff purchased this property, there is absolutely no such reference. Here the suit is filed for simple injunction and if really, there is a necessity of easements, plaintiff should first claim declaration of easementary rights and then consequentially for the relief of injunction. If the road as pleaded by plaintiff was in existence and being used as ingress and egress over a long period and if it is prevented or closed, then the remedy of the plaintiff is to claim mandatory injunction, but viewed in any angle, *prima facie* the relief of permanent injunction is not maintainable. While considering the relief at interlocutory stage, the Courts have to see whether the claim of a particular party is *prima facie* strong or not to get the main relief and in such cases only, the Courts are expected to grant interim relief, but here as seen from the material documents, the *prima facie* case is not in favour of the plaintiff on the other hand, it is in favour of the defendant.

11. One of the contentions of the plaintiff is that on 14-08-2009, the defendant has threatened the plaintiff with dire consequences and prevented the plaintiff from using the approach road to enter his property, but as seen from the passport marked as Ex.R5, the defendant was not in the country on 14-08-2009, therefore, this allegation is *prima facie* incorrect. Defendant also produced an approved plan issued by Gram Panchayat, which also supports the version

of defendant. It is the duty of the plaintiff to place strong positive material in support of the relief of interim injunction, but the material placed by plaintiff do not show *prima facie* existence of a road as pleaded by the plaintiff and the rough sketch is only a self made document and on which no reliance can be placed, but the appellate Court ignoring these aspects, simply granted injunction, which in my view, a grave error committed by appellate Court and the same has to be rectified.

12. On a scrutiny of the material, I am of the view that there is no *prima facie* material to show existence of the road between Survey Nos.126 & 128 and as such, plaintiff failed to make out *prima facie* case and the balance of convenience is also not in his favour as such, he is not entitled for the relief of interim injunction.

13. For these reasons, the impugned order dated 11-08-2010 of I Additional District Judge, Ranga Reddy in CMA No.783/2009 is set aside and the order of the trial Court, dated 24-11-2009, in I.A.No.1571/2009 is restored. However, since the suit is of the year 2009, trial Court is directed to dispose of the suit as expeditiously as possible, without being influenced by any of the observations of this Court and the lower appellate Court.

14. With above direction, the Civil Revision Petition is allowed. Both parties shall bear their own costs.

15. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:19.01.2015

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