

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1217 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.05.03.2014 in C.M.A.No.18 of 2013 [Old C.M.A.No.2 of 2013] on the file of Additional District Judge, Miryalaguda, confirming the order dt.06.12.2012 in I.A.No.690 of 2012 in O.S.No.218 of 2012 on the file of Senior Civil Judge, Miryalaguda.

2. The petitioners herein are defendants in the above suit.
3. The said suit was filed by sole respondent against petitioners for a perpetual injunction restraining petitioners from interfering with his alleged peaceful possession and enjoyment of suit schedule property.
4. The suit schedule property is described as an extent of Acs.04.03 guntas in Sy.No.47/1A and an extent of Ac.0.07 guntas in Sy.No.47/2AA, situate at Chillapuram Revenue Village, Miryalaguda Revenue Mandal, Nalgonda District.
5. The respondent/plaintiff alleged that suit schedule property was acquired by him from his ancestors by way of inheritance and he has been cultivating the same. He also pleaded that his name was mutated in Revenue Records and pattadar passbook and title deed have also been issued to him. He claimed that petitioners were trying to occupy the suit schedule property with force on 25.07.2012 and they had also tried to obstruct agricultural operations in the suit schedule property, and he had

lodged an FIR against them and got them arrested. He again claimed that petitioners had, on 01.08.2012, illegally trespassed into the suit schedule property and tried to stop agricultural operations, and therefore, he filed the suit.

6. Counter-affidavit was filed by petitioners denying the title and possession of respondent over the suit schedule land. The petitioners contended that 1st petitioner is the owner and possessor of land of an extent of Ac.1.23 guntas in Sy.No.47/1A, that 1st petitioner had filed O.S.No.173 of 2012 before the Principal Junior Civil Judge, Miryalaguda on 31.07.2012 and he obtained a temporary injunction order pending the said suit against respondents herein in I.A.No.303 of 2012 and that the said order was subsisting. The petitioners alleged that respondent was trying to grab the property of 1st petitioner which had been purchased by 1st petitioner's father under a registered Document No.1569/1983. Other contentions on merits were also raised.
7. The respondent filed I.A.No.690 of 2012 under Order 39 Rules 1 and 2 C.P.C. seeking a temporary injunction restraining petitioners from interfering with the alleged peaceful possession and enjoyment of the suit schedule property.
8. In the said I.A., the respondent filed Exs.P.1 to P.34 and petitioner filed Exs.R.1 to R.8.
9. By order dt.06.12.2012, the said I.A. was allowed by the Senior Civil Judge, Miryalaguda. While admitting that Ex.R.7 temporary injunction order dt.31.07.2012 in I.A.No.303 of 2012 in O.S.No.173 of 2012, was obtained by 1st petitioner against

respondent for an extent of Acs.1.23 guntas in Sy.No.47/1A, and that the boundaries given by respondent in the present suit cover the said land, he ignored it and granted temporary injunction in favour of respondent in I.A.No.690 of 2012 in O.S.No.218 of 2012 relying on Exs.P.14 to P.34, said to be paper clippings and photographs. He also relied on Exs.P.1 to P.4 and advised both parties to get the land sub-divided by applying to Revenue authorities stating that he is not “deeply going into merits and title of parties”.

10. This was questioned by petitioners before the Additional District Judge, Miryalaguda in C.M.A.No.18 of 2013.
11. By order dt.05.03.2014, the said appeal was dismissed. The lower appellate court observed that the boundaries mentioned for the properties claimed by petitioners and the respondent appear to be common, but the question of boundaries is a matter to be deeply considered at the time of trial and not at appellate stage. It held that the injunction obtained by petitioners in I.A.No.303 of 2012 in O.S.No.173 of 2012 is in relation to a different property and would not operate against respondent. It again referred to Exs.P.14 to P.30 paper clippings and Exs.P.31 to 34 photographs as corroborative evidence to prove possession of respondent, apart from pattadar passbooks and pahanis filed by him.
12. Challenging the same, the present Revision is filed.
13. Heard Sri M. Rajamalla Reddy, counsel for petitioners; and Sri K.V. Subba Reddy, counsel for 1st respondent. None appears for 2nd respondent even though notice in the Revision has been

served.

14. The counsel for petitioners contended that the trial court had categorically held that the land in respect of which petitioners had obtained temporary injunction on 31.07.2012 in I.A.No.303 of 2012 in O.S.No.173 of 2012 falls within the land claimed by respondent; when that was the conclusion of trial court, the trial court ought not to have ignored that such temporary injunction subsists against respondent herein in O.S.No.173 of 2012 and grant a temporary injunction in I.A.No.690 of 2012 in O.S.No.218 of 2012 against petitioners relying on certain paper clippings Exs.P.14 to P.30 and photographs Exs.P.31 to P.34; that the lower appellate court, having observed that the issue of boundaries is a matter to be gone into in the Trial Court, could not have again held that temporary injunction obtained by petitioners in I.A.No.303 of 2012 in O.S.No.173 of 2012 is in respect of a different property; and, therefore, prayed that the orders passed by both the Courts be set aside.
15. Although counsel for respondents sought to contend that the order dt.31.07.2012 in I.A.No.303 of 2012 in O.S.No.173 of 2012 on the file of Principal Junior Civil Judge, Miryalaguda is only an *ex parte* order and that the orders impugned herein are orders passed after contest, and that the order in I.A.No.303 of 2012 in O.S.No.173 of 2012 will not therefore operate and bind it, I am unable to agree with the said submission.
16. Whether the order of temporary injunction obtained by petitioners against respondent in I.A.No.303 of 2012 in O.S.No.173 of 2012 on the file of Principal Junior Civil Judge, Miryalaguda is an *ex parte* order and was an order passed after contest, it continues

to operate against respondent. Since the said order is subsisting, it has to be presumed that the respondent was not in possession as on the date of filing of O.S.No.218 of 2012. Once the Senior Civil Judge, Miryalaguda had come to the conclusion that the land of Ac.1.23 guntas claimed by petitioners in O.S.No.173 of 2012 falls within the boundaries of land claimed by respondent in O.S.No.218 of 2012, the said Court could not have granted any temporary injunction in favour of respondent, without the lands of both parties being demarcated pending suit. The said Court also erred in relying on paper clippings Exs.P.14 to P.30 and photographs Exs.P.31 to P.34 to prove the possession of respondent on the date of filing of suit in spite of the fact that O.S.No.218 of 2012 had been filed by respondent after the temporary injunction was granted against him on 31.07.2012 in I.A.No.303 of 2012 in O.S.No.173 of 2012.

17. The lower appellate court also committed the same mistake, and having observed that the question of boundaries is a matter to be considered in the trial, it could not have held that O.S.No.173 of 2012 dealt with a different property from what is claimed in O.S.No.218 of 2012.
18. Therefore, both orders of trial court as well as lower appellate court are perverse, contrary to law and cannot be sustained.
19. Therefore, they are set aside and the Civil Revision Petition is allowed. Consequently, I.A.No.690 of 2012 in O.S.No.218 of 2012 is also dismissed. No order as to costs.
20. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29.09.2015

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