

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4423 of 2015

ORDER:

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The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 22.08.2015 passed in C.M.A.No.3 of 2015 on the file of the VI Additional District Judge, Godavarikani, wherein the order of the Junior Civil Judge, Godavarikani granting temporary injunction in I.A.No.356 of 2012 in O.S.No.164 of 2012 was set-aside.

The facts in brief are as under:

The petitioner claiming himself to be an owner of the land admeasuring Ac.0.39 gts., in Sy.No.351/B situated at Jayyaram Village, Ramagundam Mandal, Karimnagar District. After the death of his father, himself and his brothers partitioned the properties and in consequence of the same, the property in dispute was allotted to the petitioner. It is stated that since then he is in continuous possession and enjoyment over the said land. It is averred that respondent No.1, who is the grandson of step mother of petitioner and respondent No.2, who is the son of younger brother of the petitioner, have no right over the property and are trying to interfere with the peaceful possession and enjoyment of the petitioner over the said property, While so, O.S.No.164 of 2012 came to be filed by the plaintiff seeking permanent injunction restraining the respondents/defendants and their men from interfering with the peaceful possession and enjoyment of the petitioner over the plaint schedule property. Pending the said suit, the petitioner/plaintiff filed I.A.No. 356 of

2012 under Order 39, Rule 1 and 2 of C.P.C. for grant of ad-interim injunction against the respondents.

A counter came to be filed by the respondents denying the averments made in the affidavit filed in support of the petition. According to them, the schedule property is an ancestral property and after the death of father of the petitioner, the agriculture lands which are in the name of the father of the petitioner were partitioned. It is said that, Survey No.351 was divided into parts and Pennaboina Ramalingam and Pennaboina Laxmi Rajam were allotted Ac.3.10 gts., each. The dispute is with regard to land in Sy.No.351/B which was enjoyed by the father of the second respondent. It is stated that the father of the second respondent sold away the remaining land except the subject land and after his death, the second respondent succeeded to the same and his name was also mutated in the revenue records. Since the value of the land has increased, the petitioner is trying to grab the property. Affidavit of one Merugu Komuraiah, who is nearby land owner, was also filed to show that the said land was gifted to Ponnaboina Rayamallu by Ponnaboina Laxmi and the said Ponnaboina Rayamallu (respondent No.1) is in possession and cultivating the same by raising cotton crop in the said land. They also placed on record the affidavit of Ponnaboina Gattaiah in support of their plea.

By an order, dated 06.09.2014, the learned Junior Civil Judge at Godavarikani, allowed the said petition and granted temporary injunction in favour of the petitioner against the respondents and their henchmen from interfering with the schedule property. Aggrieved by the same, the respondents herein preferred an appeal before the VI Additional District

Judge, Godavarikani vide C.M.A.No.3 of 2015. By its judgment dated 22.08.2015, the learned VI Additional District Judge, Godavarikani, allowed the appeal and set aside the injunction order. Challenging the same the present revision is filed.

Heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner submits that notice sent to the first respondent was served and the notice sent to the second respondent was returned stating that the said person is not in the village from 02.11.2015 to 09.11.2015.

While considering an application for grant of injunction, the Court will only take into consideration the basic elements in relation thereto, viz., existence of a *prima facie* case, balance of convenience and irreparable injury.

In ***Skyline Education Institute (Pvt.) Ltd., v. S.L.Vaswani and another***^[1] the Apex Court held that once the Court at first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate Court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of *prima facie* case, balance of convenience, irreparable injury and enquiry. Unless the appellate Court comes to the conclusion that the discretion exercised by trial Court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent

or perversity and manifest injustice has been done, there will be no warrant for exercise of power.

Keeping in view the principles of law laid down by the Apex Court in dealing with the cases of temporary injunction, I shall proceed to deal with the case on hand.

It is to be noted that the petitioner herein mainly relied upon Exs.P1 to P3 namely Pahanies for the Fasli Years 1420, 1421 and 1422. Without touching the aspect of possession as on the date of filing of the suit, the trial Court observed that Exs.P1 to P3 *prima facie*, carry more weight than the documents filed by the respondents. Coming to Ex.P4 adangal pahani for the year 2011-2012 it has been observed by the trial Court that the name of the petitioner was shown as pattadar and enjoyer of the suit schedule property and since those documents are free from doubts, held that the same throws light on the possession of petitioner over the suit property. Insofar as Ex.R1- 1-B Namoonah filed by the defendants is concerned, it has been held that the said documents show that suit land stands in the name of respondent No.2. The trial Court also held that though Ex.R1 carries weight to the extent of entries discussed above, it has nothing to deal with the aspect of possession as on the date of filing suit/petition. Insofar as Ex.R3 adangal pahani for the year 2011-2012 is concerned, the trial Court having regard to the entries made therein held that the same does not actually give sufficient weight to support the case of the respondents. Hence, the trial Court relied on Exs.P1 to P4 to come to a conclusion that the petitioner was in possession of the property. The said aspects were negated by

the appellate Court holding that Ex.R1 shows possession in favour of respondent No.2 and that it may not be proper to reject the contents of Ex.R2 though there are some over writings on the documents.

It is to be noted that the petitioner and respondents are very closely related to each other. First respondent herein is the grand son of petitioner's step mother and second respondent is the son of the younger brother of petitioner. The suit was filed by the petitioner herein seeking permanent injunction in the month of November, 2012. It is also not in dispute that the petitioner herein worked as V.R.O. and he claims to be owner of the disputed property admeasuring Ac.0.39 gts., in Sy.No.351/B and that he succeeded to the said property after the death of his father, pursuant to an oral partition between the petitioner and his brothers. It is his case that respondent Nos.1 and 2 who are his close relatives, are trying to encroach on to the property which lead to filing of the suit. Pending the suit, I.A.No.356 of 2012 came to be filed seeking ad-interim injunction. The documents which are sought to be relied on by the petitioner are Exs.P1 to P4-pahanies.

On the other hand, the respondents not only relied upon the pahani for the year 2011-2012 which is marked as Ex.R3 but also on Ex.R1 1-B Namoonaa and Ex.R2 sada partition deed.

A perusal of the material on record would show that Exs.P2 to P4 are adangals starting from the Fasli Year 1420 to 1422. The name of the petitioner finds place in the adangal, but contrary to the same, Ex.R1 which is Form 1-B show that the second respondent is pattadar of the land in Sy.No.351/B to an

extent of Ac.0.39 gts. and this Form 1-B was signed not only by the petitioner as V.R.O. but it was countersigned by the Tahsildar. Further, in Ex.R3, which is the adangal for the year 2011-2012, the name of the first respondent was shown in possessor column, where as the name of the petitioner was shown in pattadar column. Apart from that the respondents placed on record the oral partition deed as Ex.R2. As observed by the appellate Court, the list of properties that fell to the share of the brothers were also not specifically mentioned. Though there are some over writings and since the said document is filed by the defendants themselves, it may not be proper to comment on the genuinity, authenticity and admissibility of the said documents at this stage. In view of the documents more particularly the Form 1-B (Ex.R1) which was signed not only by the petitioner but also countersigned by the Tahsildar, that the second respondent is shown as pattadar of the land admeasuring Ac.0.30 gts., in Sy.No.351/B. Even the trial Court while dealing with Ex.R3 categorically stated that the second respondent name is shown as enjoyer over the suit property, but since the name of the petitioner was shown in the pattadar column, the same was rejected. Therefore, *prima facie* it stands established that the respondents are in possession since they are shown as enjoyers of the suit property. The trial Court proceeded on the premise that the petitioner is in possession of the property as the name of the petitioner is shown as pattadar and having a valid title. In a suit for injunction, the issue which needs to be considered is as to who is in possession of the property as on the date of filing of the suit. As per the findings given by the trial Court and the material referred to above *prima facie* show that the respondents are in possession of the

property. Under those circumstances, the order of the appellate Court warrants no interference and the Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is advised to dispose of the suit as expeditiously as possible, preferably within a period of three to six months from the date of receipt of a copy of the order.

There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

03.12.2015
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[\[1\]](#) AIR 2010 SC 3221 (1)