

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1627 of 2015

ORDER:

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Assailing the order dated 25.02.2015 passed in C.M.A.No.28 of 2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, defendant Nos.8 and 9 preferred the present Civil Revision Petition under Article 226 of the Constitution of India.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the trial Court.

The facts in issue are as under:

The case of the plaintiff is that he is absolute owner and possessor of the properties covered under Schedule "A" to "D". He claims to have purchased the suit schedule properties through registered sale deed vide document No.13840 of 2012 dated 27.12.2012 for a valid sale consideration from its lawful owner Smt. Kaleemunnisa Begum, W/o. late Awaz Bin Musallam and he was put in possession thereof. According to him, he has been enjoying the properties by paying taxes. It is his case that originally the schedule property belongs to one Awaz Bin Musallam and after his death the same got devolved on to the vendor of the plaintiff. After the sale, the name of the plaintiff was mutated in all the revenue records and the Tahsildar, Karimnagar, vide proceedings No.B1/1466/2009 dated 30.03.2011 held that the name of Awaz Bin Musallam has been recorded in khasra pahani as pattadar and there is no

change in faisal patti and that the name of said Awaz Bin Musallam is also reflected in Chowpasla and ordered to substitute the name of Smt. Kaleemunnisa Begum, the widow of late Awaz Bin Musallam. It is the case of the plaintiff that the Village Revenue Officer conducted an enquiry and issued possession certificate vide No. C/19/GP2013 dated 04.03.2013. When the defendants started interfering with the possession and enjoyment of the plaintiff, he was constrained to file the suit for grant of perpetual injunction.

Defendant Nos.1 to 3 and 7 to 9 filed counter denying the right and title of the plaintiff's predecessor in title. It is their case that Khasra pahani for the year 1954-55 show the name of one Shaik Mohammed as pattadar and the same was suppressed. The name of P.Veera Reddy is recorded as pattadar and possessor and subsequently the name of these defendants are recorded. It is contended that out of Ac.9.02 gts., Ac.2.14 gts., was acquired by Railway authorities and the name of Awaz Bin Musallam was not recorded either as pattadar or possessor and the pahanies revealed the name of Shaik Mohammed, who was the vendor's vendor of these defendants.

Defendant No.6 filed his counter contending that the land in Sy.No.431/a, 431/aa and 432/a and 432/aa admeasuring Ac.0.03 gts., Ac.0.07 gts., Ac.0.16 gts., and Ac.0.31 gts., was owned and possessed by Gaddam Ramaiah, Gaddam Mallaiah, Kothapalli Mallaiah and Sathineni Varalasmi. They purchased the said land under registered sale deed and got their name mutated in the revenue records. Respondent No.6 sold the said land to S. Amrutha Koti and Arjun Kumar. It is said that neither

the plaintiff nor his vendor are owners and possessors of the land in 'D' schedule properties.

Defendant No.10 filed counter contending that the land in Sy.No.431/a and 432/aa was originally possessed by Kothapalli Ramaiah and on his death his sons K.Lingaiah and Kothapalli Mallaiah and his grand sons Kothapalli Thirupati and Venkatesham succeeded to the same and enjoyed the property. Later they sold Ac.0.03 gts in Sy.No.431/a, Ac.0.16 gts. in Sy.No.432/a and Sy.No.433 to one Cheeti Sriranga Rao under registered sale deed, who inturn sold the said land along with other lands to Kondam Dasharath Reddy, T.Lokeshwar Reddy and defendant No.1 under registered sale deed dated 06.09.2005. It is thus contended that defendant No.10 and the above persons are in joint possession in respect of land admeasuring Ac.1.12 gts., and are raising paddy crop in the said land. It is further stated that the plaintiff is not in possession of 'C' schedule properties and that he claims possession basing on fraudulent documents.

During inquiry in I.A., the trial Court marked Exs.P1 to P17 and Exs.R1 to R.43 on behalf of the defendants. After considering the rival arguments advanced by both the parties and after perusal of the record the learned Additional Senior Civil Judge, Karimnagar, by his order, dated 16.09.2014 dismissed the said I.A. holding that the plaintiff failed to prove his possession and the documents filed by the defendants show that they are in possession of the property. Aggrieved by the same the plaintiff filed C.M.A.No.28 of 2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar. By an order, dated 23.02.2015, the learned

Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, allowed the appeal in part. The operative portion of the judgment is as under:

“The appeal is hereby allowed in part by granting temporary injunction restraining the defendants from interfering with the possession of the plaintiff in “A” and “B” schedule properties except the properties covered by Ex.R.23 (physical possession of 38 cents in Sy.No.399), Ex.R.26 (physical possession of 28 cents in Sy.No.399) and Ex.R.28 (physical possession of Ac.1.00 in Sy.No.399) and Exs.R.35 to R.43. The appeal in respect of “C” and “D” schedule property was dismissed. The appeal in respect of the properties covered by Ex.R.24, R.26 and R.28 is hereby dismissed.”

Challenging the said judgment, defendant Nos.8 and 9 filed the present revision.

While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz., existence of a *prima facie* case, balance of convenience and irreparable injury, it also take into consideration the conduct of the parties as grant of injunction is an equitable relief.

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.

The main ground urged by the learned counsel for the petitioners herein is that the appellate Court did not consider or taken into account the documentary evidence which has been placed in the trial Court more particularly kasra pahanies, sale deeds and pattadar pass books. It is his case that if these documents are taken into consideration, it would have definitely held that the defendants are not only in possession of the property but also have a title over the same.

Per contra the learned counsel for the plaintiff would submit that the order under challenge warrants no interference. According to him while deciding an application for temporary injunction the Court cannot go into the issue as to who is the owner of properties. What all the Court has to see is the person who is in possession of the property at the time of filing of the suit. It is his case that entries in revenue records do not confer

any title to the person in whose name the entries are made against person who acquired valid title, in view of the judgment of this Court in ***Sammata Tulasi Ram and others v. State of Andhra Pradesh and others***^[2]. He also relied upon a judgment of this Court in ***Yeluri Vijayabharati and others v. Yeluri Manikyamma and others***^[3] wherein this Court held as under:

“Although the entries in the Records of Rights register enjoy the presumption in law that the entries are true unless the contrary is proved and may not be discredited, the records of rights are no records of documents of title. Such documents are more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid. In other words, the records of rights are the documents ensuring the person to be made liable to pay the revenue and for no other purpose. However, it may not be hastened to be added that such entries have got corroborative value regarding the possession of a party in regard to an immovable property.”

There is no dispute with regard to the proposition of law laid down by the Apex Court that one of the main ingredients to be established for the purpose of seeking temporary injunction is that the person who claims to be in possession of the property should prove the same as on the date of filing of the suit. At the same time it is also held by the Court that he has to prove the case on his own and should not depend on the weakness of the defendants.

Therefore, the short question that falls for consideration is whether the plaintiff or defendants who are in possession of the property as on the date of filing of the suit.

As referred to above number of documents are filed by the defendants as well as the plaintiff claiming possession over the property. The suit seeking perpetual injunction came to be filed on 05.08.2013. No pahanies for the year 2012 and 2013 are placed either by the plaintiff or the defendants before the Court, but Ex.R21 relates to pahani for the year 2014 which is much subsequent to filing of the suit. The sale deed Ex.P1 which has been filed by the plaintiff is dated 27.12.2012, wherein the plaintiff is said to have purchased the said property from Kaleemunnisa Begum. Exs.P4 and P5 relate to the proceedings issued by the Tahsildar, Karimnagar, show possession in favour of the vendor of the plaintiff.

As stated earlier it is the case of the plaintiff that he has purchased the property from one Kaleemunnisa Begum vide Ex.P1, who is the wife of Awaz Bin Musallam. He also places reliance on the mutation order made in favour of his vendor under Ex.P5 apart from relying on Ex.P6 patta certificate. The plaintiff also relied on Ex.P7, a copy of the sale deed of the husband of the vendor of the plaintiff.

As against the same the defendants filed pahanies for the year 1961-62, 1965-66, 1974-75, 1977-78, 1978-79, 1981-82, 1984-85, 1990-91, 1991-92, 1993-94, 1996-97, 2001-2002, 2002-2003, 2004-2005, 2007-2008, 2009-2010 and 2014 under Exs.R4 to R.20. The defendants also filed Ex.R.33, R.34 and R.40 the sale deeds.

A perusal of the documents filed would show that one Awaz Bin Musallam purchased the said property under original of Ex.P7 and Ex.R.22 being the translation of Ex.P7. From these two documents it is clear that both the parties acknowledge or accept that Awaz Bin Musallam is the original owner of the property. That being the situation, the next question that would come up for consideration is who is the successor of the said property after the death of Awaz Bin Musallam.

Neither the plaintiff nor the defendants have placed any document to show that Awaz Bin Musallam, executed any document during his life time in favour of third parties or to the predecessor in title of the defendants. Kasra Pahanies for the year 1954-55 show that one Shaik Mahamood was a pattadar of the schedule property. But no document is placed before the Court to show as to how Veera Reddy became the pattadar and possessor of the schedule property. On the other hand, the counter filed by defendant No.6 show that Gaddam Ramaiah, Gaddam Mallaiah, Kothapalli Mallaiah are possessors of the property and from them Smt. Sathineni Varalaxmi purchased the said land. The counter filed by defendant No.10 reveal that Kothapalli Ramaiah is the pattadar and possessor of land in Sy.Nos. 431/a and 432/a.

Two documents Ex.P7 and Ex.R.22 assume significance to decide the case on hand. It is to be noted that Ex.P7 is the certified copy of the registered sale deed in Urdu and Ex.R.22 is the translation of Ex.P7. One document is filed by plaintiff and translated copy is filed by the defendants. In the said document Awaz Bin Musallam is shown as the owner of the property. He

was alive till 2004. Mutation proceedings vide Ex.P8 came to be issued by the Tahsildar, Karimnagar mutating his name in the revenue records. After his death, the property is presumed to have devolved in favour of his wife Kaleemunnisa Begum since no material is placed by defendants to show that Awaz Bin Musallam has sold the property to their predecessor in title during his life time. Though they contended that one Sk.Mahamood is the original owner and pattadar of property and that subsequently P.Veera Reddy became owner of the property by virtue of consent decree in O.S.No.502 of 1975, but the said consent decree does not anywhere show that P.Veera Reddy has got any pre-existing right over the property. In the absence of any such pre-existing right the issue as to the right of P.Veera Reddy by virtue of consent decree needs to be adjudicated after a full fledged trial. At this stage it may not be proper for this Court to comment that by virtue of consent decree and without any registration P.Veera Reddy assumed title over the property.

As stated earlier, the argument of the learned counsel for defendant Nos.8 and 9 was that the property originally belonged to Sk. Mahamood, who inturn sold the same to Veera Reddy. But as seen from the record no document has been filed to show as to how Sk.Mahamood became the owner of the property. Though reliance was placed on kasra pahanies for the year 1954-55 to prove the ownership and possession of Sk.Mahamood but the registered sale deed Ex.P7 executed by Narsing Rao in favour of Awaz Bin Musallam have to be given importance when both the parties are claiming possession in respect of the same property. The only ground on which the

trial Court dismissed the I.A. was that kasra pahani for the year 1954-55 showed the name of Sk.Mahamood and subsequently the name of P.Veera Reddy in the pahanies. But the execution of registered sale deed by Narsing Rao in favour of Awaz Bin Musallam is not seriously challenged and the contents of the said documents are not proved to be *prima facie* false. Hence after the death of Awaz Bin Musallam in the year 2004, by which date the property was also mutated in his name, the property devolved on to his wife Kaleemunnisa Begum, who inturn sold the property by virtue of sale deed in favour of the plaintiff.

Further, the revenue record also show that the property that was sold to the plaintiff was rounded off when the registration took place in the year 2012. Taking advantage of rounding of the survey number the trial Court took a different view with regard to rounding off of the suit survey numbers. Apart from these documents, Exs.P5, P8 and P12 also show that the revenue authorities have mutated the name of the plaintiff in the revenue records.

As observed by the lower appellate Court, some of the properties more particularly the properties which are covered under Exs. R.24, R.26 and R.28 are said to be in possession of defendant Nos.1 to 3.

Though the learned counsel for the petitioners mainly submits that in view of Exs.R.29 and R.30, which are the registered sale deeds of the year 1991, defendant Nos.8 and 9 have to be declared as the persons in possession of the property, but I am afraid, the same cannot be accepted for the reason that it is their case that out of Ac.9.02 gts., Ac.2.14 gts.

of land was acquired by railway authorities and they claimed to have purchased nearly Ac.5.00. A perusal of the document show that both the defendants purchased land admeasuring Ac.1.40 gts., in Sy.No.399 vide document No.1482/99 (Ex.R29) and Ac.3.02 gts., in Sy.No.399 vide document No.210/91 (Ex.R30) and the total land is Ac.5.02 gts. As contended by the defendants in their counter, out of Ac.9.02 gts., Ac.2.14 gts., was already acquired by the railways and as per Exs.R.24, R.26 and R.28 an extent of Ac.2.16 gts., is found to be in possession of defendant Nos.1 to 3 which fact is not seriously contended. If the land acquired by railways and the land claimed by defendant Nos.8,9 and 1 to 3 is put to together, the record reveals more land that its existence in Sy.No.399. Therefore, it may not proper for this Court, at this stage to go into the authenticity and genuinity of the Exs.R.29 and R.30 and also as to whether really the revision petitioners have any right over the said property.

Since the plaintiff were found to be *prima facie* in possession of 'A' and 'B' schedule properties except the properties covered by Exs.R24, R26, R.28 and 35 to 43, the order under challenge warrants no interference. However, the trial Court is advised to dispose of O.S.No.183 of 2013 at the earliest, preferably, within a period of eight months from the date of receipt of a copy of this Court.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

09.09.2015

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

[\[2\]](#) 2004 (3) ALT 200

[\[3\]](#) 1998 (2) ALT 623