

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.2542 of 2015

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.05-11-2014 in C.M.A.No.90 of 2012 of the V Additional District Judge (II-F.T.C.), Warangal confirming the order dt.23-08-2012 in I.A.No.224 of 2011 in O.S.No.222 of 2011 of the II Additional Junior Civil Judge, Warangal.

2. The petitioners herein are defendants in the suit.

3. The respondent/plaintiff filed the suit for a perpetual injunction restraining the petitioners from interfering with her alleged possession and enjoyment of the plaint schedule property. She claimed to be the owner of the plaint schedule property which is an extent of Ac.5.30 gts in Sy.No.75 of Allipuram village, Warangal Mandal and District and claimed to have purchased it under Ex.P-1 dt.01-02-2011. She claimed title through the said sale deed and pleaded that her vendor obtained title through late Kallepalli Chandraiah and his wife Yellamma. She alleged that the petitioners attempted to trespass into the property forcing her to file the suit.

4. Along with the suit, she also filed I.A.No.224 of 2011 under Order XXXIX Rules 1 and 2 CPC seeking a temporary injunction pending suit restraining the petitioners from interfering with her possession and enjoyment of the property raising similar pleas.

5. Counter affidavit was filed by 1st petitioner disputing the claim of respondent that she had title to the property and setting out how the petitioners have title to the property. The possession of respondent was also denied.

6. A rejoinder was filed by respondent denying the averments made in the counter affidavit of 1st petitioner.

7. An *ad interim* injunction was granted *ex parte* in favour of respondent on 08-03-2011.

8. After counter affidavit was filed by 1st petitioner, both parties led evidence and respondent marked Exs.P-1 to P-7 and petitioners got marked Exs.R-1 to R-27.

9. By order dt.23-08-2012, the trial Court made the *ad interim* injunction granted on 08-03-2011 to respondent absolute. It held that the entries in the revenue records appear to be irregular and such entries cannot be relied upon as the basis to decide the question of possession, and since respondent's predecessor-in-title Kallepally

Chandraiah is shown as pattedar in the pahanies filed by both parties, he has *prima facie* title and his possession has to be presumed to have followed the said title.

10. The petitioners questioned the said order dt.23-08-2012 in I.A.No.224 of 2011 in C.M.A.No.90 of 2012 before the V Additional District Judge (II.FTC), Warangal. The injunction granted by the trial Court was not suspended by the lower appellate Court.

11. Ultimately, C.M.A.No.90 of 2012 was also dismissed on

05-11-2014 on appreciation of contentions on both sides. The lower appellate Court held that *prima facie* the petitioners failed to prove the title of K.Yakaiah and K.Uppalaiah, from whom Katkuri Rajamalliah transferred Ac.1.20 gts in Sy.No.75 in favour of 1st petitioner. It accepted the plea of respondent that respondent had *prima facie* title to the property by virtue of Ex.P-1 sale deed and that the land claimed by respondent was distinct from the land claimed by petitioners.

12. Challenging the same, this Revision is filed.

13. The learned counsel for petitioners Sri P.Keshava Rao contended that the orders passed by both the Courts below are contrary to the settled principles of law; the trial

Court erred in doubting the revenue records filed by petitioners, in accepting Ex.P-1 title deed set up by respondent, in concluding that respondent had title to the property and holding that possession of respondent followed the title, particularly when the pahanis for the period just prior to filing of suit were not filed by respondent. He further contended that the lower appellate Court erred in placing burden of proof on petitioners for proving their possession as on the date of filing of the I.A. and that the lower appellate Court ought to have placed burden of proving possession on respondent and not on the petitioners.

14. Sri K.Vinay Kumar, learned counsel appearing for respondent supports the orders passed by both Courts below and contends that the finding of the lower appellate Court that the petitioners have not *prima facie* established their title to the plaint schedule property, cannot be ignored and therefore the petitioners have no right to be in possession of the plaint schedule property; the respondent is a lady aged 70 years and since she had enjoyed the injunction from 08-03-2011 till date for a period of almost 4 years 5 months, at this stage, this Court should not interfere with the orders passed by the Courts below and set aside the

same.

15. I have noted the submissions of both sides.

16. From the facts narrated above, it is clear that both parties claim title to the plaint schedule property. According to the trial Court, the entries in some of the revenue records are irregular and it is not safe to rely on them. In view of these observations of the trial Court, the question of possession can be more elaborately considered after trial wherein both parties would get an opportunity to lead evidence and possibly examine the revenue officials and establish the genuineness of the revenue records relied upon by either of them. The question of title is undoubtedly incidental in a suit for perpetual injunction. But since the contentions in that regard have been raised by both sides, after taking evidence, the trial Court would be in a better position to appreciate this issue also and give finding thereon.

17. Since the respondent had enjoyed an injunction from 08-03-2011 till date for a period of 4 years 5 months, in the interest of justice, without expressing any opinion on the merits of the case, I therefore direct the trial Court to decide the suit itself as expeditiously as possible preferably within a period of six months from the date of

receipt of a copy of this order. It is however directed that the respondent shall not alienate the subject property or change the physical features thereof till the suit is decided.

18. Accordingly the Civil Revision Petition is disposed of with the above directions. No costs.

19. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 05-08-2015

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