

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**CRP.No.4018 of 2014**

**ORDER :**

This Revision is filed challenging the order dt.08.09.2014 in C.M.A.No.77 of 2012 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, confirming the order dt.22.06.2012 in I.A.No.753 of 2011 in O.S.No.2886 of 2011 on the file of II Junior Civil Judge, City Civil Court, Hyderabad.

**2.** The subject matter of the suit is an extent of 442 Sq.yds. out of 742.05 Sq.yds. bearing H.No.8-2-269/2, Plot No.1, situate at Road No.2, Banjara Hills, Hyderabad.

**3.** The petitioner/plaintiff filed the suit against respondents claiming that he is the absolute owner and possessor of the above property and that he had purchased the same under a registered sale deed dt.14.03.1974 from his vendor Mohd. Hasan Khan, S/o.Late Mohd. Shahbhaz Khan; his vendor purchased the plot from one T.V. Ramachandraiah, S/o. Venkata Ramaiah on 09.12.1996 under Ex.P.3 Sale Deed; the said T.V. Ramachandraiah had purchased the same from one Narayana and Ramulu through registered sale deeds both dt.16.04.1964; he is in continuous peaceful possession and enjoyment of the suit schedule

property; he got the sale deed dt.14.03.1974 impounded by paying deficit stamp duty on 25.02.2008 and then he approached the Greater Hyderabad Municipal Corporation for obtaining layout regularization, which was granted on 29.08.2011; his name was mutated in the Municipal Records on 15.09.2011; that when he started constructing a compound wall, officials of 1<sup>st</sup> respondent came to the property and tried to demolish the compound wall at the instance of respondent nos.2 to 5 and so he filed the suit.

**4.** Along with the suit he also filed I.A.No.753 of 2011 under Order 39 Rule 1 and 2 seeking a temporary injunction restraining the respondents from interfering with his peaceful possession and enjoyment of plaint schedule property.

**5.** Written statement was filed by 1<sup>st</sup> respondent disputing the title of petitioner to the plaint schedule property. He contended that the plaint schedule property is non-existent and under the guise of Exs.P.1 to P.4, the petitioner is trying to grab government property in T.S.No.3/1, Block – C, Ward No.10 correlating to Sy.No.403 part of Shaikpet Village and Mandal; that the land being claimed by petitioner is of extent 478 Sq.yds., and it is a vacant land covered by fencing with the sign board 'Government land' thereon. The possession and enjoyment of petitioner and his vendors was denied and it

was contended that the house number mentioned by petitioner does not exist since there is no construction or structure in the subject property. It was contended that by mentioning the said house number the petitioner intends to grab government land; that one K. Laxmi filed L.G.C.No.58 of 2000 against the State of Andhra Pradesh and others in respect of certain land including the subject land contending that the Government had grabbed the land without having any right or title; the said L.G.C.No.58 of 2000 was dismissed on 18.04.2011 holding that the land which is subject matter of the L.G.C. is a government land; one Mohd. Ibrahim Shareef also filed O.S.No.1056 of 2006 on the file of IV Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction against the State of Andhra Pradesh in respect of 742.85 Sq.mts. with H.No.8-2-269/2, at Road No.2, Banjara Hills, Hyderabad; and the land claimed by petitioner in the present suit as well as by plaintiff in O.S.No.1056 of 2006 is one and the same. It was contended that the suit O.S.No.1056 of 2006 was dismissed observing that plaintiff therein had failed to establish the identity of petition schedule property and is not entitled for the relief of temporary injunction. The history of Shaikpet Village was also mentioned and it was denied that the validation of the sale deed Exs.P.4 dt.14.03.1974 on 25.02.2008 would create any right over the property; that the recital in Ex.P.3, link document dt.09.12.1966 through which the petitioner's vendor T.V.

Ramachandraiah allegedly purchased from Narayana, reveals that the property in that sale deed is plot No.1 of sanctioned layout No.13/65 in Sy.No.129/11 *Paiki* (Old Survey No.129/110 to 94) situated at Road No.3, Banjara Hills, Hyderabad, but the petitioner is claiming the plaint schedule property in Road No.2, Banjara Hills, Hyderabad; therefore Ex.P.3 document does not pertain to plaint schedule property; that mutation sanctioned by the Greater Hyderabad Municipal Corporation does not pertain to the land in question; the subject property was allotted to District Registrar, Hyderabad District for construction of their office building and possession of the same has been handed over on 01.07.2011, and he is planning to construct an office to provide services to general public.

**6.** Before the trial court, the petitioner marked Exs.P.1 to P.20 and respondent filed Exs.R.1 to R.11.

**7.** Although initially *ad interim* injunction was granted against 1<sup>st</sup> respondent on 29.02.2012 till 12.03.2012, after contest, the said I.A. was dismissed on 22.06.2012. In the said order, the trial court mentioned that petitioner is claiming to have purchased the property under an un-registered sale deed dt.14.03.1974; that in the said document no survey numbers were mentioned; that 1<sup>st</sup> respondent is contending that the plaint schedule property does not exist and that it is government land; Ex.P.9,

property tax receipt, produced by petitioner does not prove possession of petitioner and even Ex.P.7, mutation proceedings of the Greater Hyderabad Municipal Corporation, would not have any bearing on the legal right to the property; and even though petitioner paid stamp duty on Ex.P.4 he has no right in the alleged property. As regards Exs.P.1 and P.2, it held that these sale deeds of vendor's vendor of petitioner showed that he purchased 20 acres of land with Sy.No.129/11 paiki, but there is no reference to old survey numbers therein; that Ex.P.3, sale deed, discloses that the property is situated in plot No.1 of Sy.No.129/11 Paiki (Old Survey No.129/10 and 94); that Ex.P.5, demand notice, issued by Greater Hyderabad Municipal Corporation to petitioner, does not disclose the house number and survey number of the property; Ex.P.11 copy of the proposed layout issued in the name of Sri T. Ramachandraiah dt.07.04.1966 does not disclose the signature of the Commissioner of Municipal Corporation of Hyderabad; even Ex.P.10, relating to T.V. Ramachandraiah, is not proof of possession of property by petitioner; Exs.P.12 to P.19, photographs, cannot be accepted as proof of possession of property by petitioners.

**8.** It held that Ex.R.2, an extract of Town Survey Land Register in respect of T.S.No.3/1, Block – C, Ward No.10 of Shaikpet Village and Mandal, Hyderabad,

indicates that the Old Survey Number of T.S.No.3/1 is Survey No.403/p and is Sarkari vacant land; Ex.R.4, copy of sethwar of 1330 Fasli (1920) is in respect of Sy.No.403 and it indicates that it is poramboke land; Ex.R.5, copy of Pahani for 1353 Fasli (1943), shows that the land in Sy.No.403 is poramboke land; Ex.R.6, pahani for the year 1966-74 shows that Sy.No.403 is poramboke land; and that Ex.R.7, panchanama conducted by Deputy Tahsildar, Shaikpet on the directions of the District Collector, indicates that an extent of 455 Sq.Yds. in T.S.No.3/1, Ward No.10, Sy.No.403 of Shaikpet Village, is Government land and on 29.06.2011, the said land was directed by the District Collector to be handed over to the District Registrar, Hyderabad. It held that in L.G.C.No.58 of 2000 (Ex.R.11) and in O.S.No.1056 of 2006 (Ex.R.9), the courts have held that the land which is in dispute therein included the plaint schedule property. Ultimately it concluded that petitioner failed to prove title and possession to the property with cogent evidence and unless he achieves this in the trial, he is not entitled to temporary injunction against respondents. It also held that there is no *prima facie* case or balance of convenience in favour of petitioner.

**9.** Challenging the same, the petitioner filed C.M.A.No.77 of 2012 before the III Additional Chief Judge, City Civil Court, Hyderabad.

**10.** Initially, it appears that a *status quo* was granted in favour of petitioner, but ultimately the appeal was dismissed on 08.09.2014. The lower appellate court also referred to documents filed by both parties and held that there are serious doubts raised regarding identity of property and unless petitioner first establishes identity of property and also his possession thereof, he is not entitled to any relief. It accepted the reasoning of trial court and held that there was no reason to interfere with the order passed by the trial court.

**11.** Challenging the same, the present Revision is filed by petitioner.

**12.** This Court initially granted *status quo* orders which was continued from time to time.

**13.** The counsel for petitioner contends that the orders passed by the Courts below are contrary to law and evidence on record; that petitioner had established his title and possession of plaint schedule property by filing Exs.P.1 to P.20; the respondents are unnecessarily creating a doubt about the identity of plaint schedule property; that the judgment in O.S.No.1056 of 2006 and L.G.C.No.58 of 2000 do not bind him, since he was not a party therein; and therefore, the said orders be set aside and the Revision be allowed.

**14.** On the other hand, the Government Pleader for

Arbitration (Telangana) re-presenting 1<sup>st</sup> respondent refuted the above contentions. He contended that the basis of claim of title by petitioner is an unregistered sale deed which does not mention the survey number; that Exs.P.1 to P.3 were rightly held by the courts below as not relating to plaint schedule property; that the concurrent findings of fact of both the courts are not liable to be interfered with in exercise of the jurisdiction of this Court under Article 227 of the Constitution of India; and therefore, this Court ought to dismiss the Revision.

**15.** I have noted the submissions of both sides.

**16.** Firstly, I am of the opinion that in an application filed seeking injunction or in an appeal against an order granting injunction or refusing injunction, the Court ought not to grant a *status quo* order without clarifying what it means by a *status quo*. If such an ambiguous order is passed it would lead to scramble for possession and this fact has been highlighted by this Court several times. (see **Chirapareddi Veeramma and others v. Sk.**

**Mahaboob Subhani and others**<sup>[1]</sup>)

**17.** The claim for injunction raised by petitioner is, no doubt, based on Exs.P.1 to P.20. Ex.P.4 is an un-registered sale deed dt.14.03.1974 on the basis of which the petitioner is claiming title to plaint schedule property. It is settled law that no title would pass under an

unregistered document. Also Ex.P.4 does not mention the survey number. The petitioner is trying to contend that the plaint schedule property falls within Sy.No.129/11 of Shaikpet Village. This is a question of fact which needs to be established after trial in the suit, particularly when a serious issue is raised about the location of plaint schedule property by 1<sup>st</sup> respondent. The documents obtained by petitioner from Greater Hyderabad Municipal Corporation do not establish the title of petitioner. Although Ex.P.11, layout copy issued in the name of T.V. Ramachandraiah on 07.04.1966 is being relied upon by petitioner, the trial court had opined that the said document does not contain the signature of the Commissioner of Municipal Corporation of Hyderabad. Therefore I am of the opinion that *prima facie* the findings of trial court that petitioner has not established *prima facie* case and there is no balance of convenience in his favour, appears to be correct. The lower appellate court has also confirmed the judgment of trial court while dismissing C.M.A.No.77 of 2012.

**18.** It is settled law that in exercise of jurisdiction under Article 227 of the Constitution of India, this Court cannot review the evidence and interfere with the findings of fact rendered by two courts. Therefore, I do not think it is a fit case to interfere with the orders passed by the court below in exercise of the restrictive jurisdiction conferred on

this Court under Article 227 of the Constitution of India. Accordingly, the Revision is dismissed with the above observations. No order as to costs.

**19.** However, I hasten to add that any findings or observations in this order or in the order in C.M.A.No.77 of 2012 or in I.A.No.753 of 2011 shall not be taken into account by the trial court while deciding the suit and the suit shall be decided uninfluenced by these observations.

**20.** Miscellaneous applications, pending if any in this Revision, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 16-06-2015

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