

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2121 of 2015

ORDER:

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The petitioner/plaintiff filed O.S.No.49 of 2014 on the file of the Senior Civil Judge, Siricilla seeking permanent injunction. Along with the said suit, the petitioner also filed I.A.No.254 of 2014 seeking ad-interim temporary injunction. By an order, dated 02.06.2014, the said I.A. was allowed and interim injunction granted earlier was made absolute. Aggrieved by the same the defendants in the suit filed C.M.A.No.23 of 2014 on the file of the III Additional District Judge, Karimnagar. By an order, dated 10.04.2015, the learned III Additional District Judge, Karimnagar allowed the said C.M.A. and set-aside the order passed by the Senior Civil Judge, Siricilla. Challenging the same the plaintiff preferred the present revision under Section 115 of C.P.C.

The parties will hereinafter be referred to as arrayed before the trial Court.

The facts which lead to filing of this revision are as under:

The plaintiff claims to be the exclusive owner and possessor of the agricultural dry land admeasuring Ac.7.12 ½ gts., situated in Sy.No.718 of Cheerlavancha Village, Siricilla Mandal, Karimnagar District. She acquired the said land through Lok Adalath Award No. 243 of 2010 dated 14.12.2010 passed in O.S.No.44 of 2008 on the file of the Senior Civil Judge, Siricilla. It is stated that basing on the said Lok Adalath

Award, the Tahsildar, Siricilla mutated the name of the plaintiff in the revenue records and accordingly issued pattadar pass book and title deed in her favour vide file No. B/52/12-1 and 2, dated 28.04.2012. It is the case of the plaintiff that since then she is in possession and enjoyment of the suit land and also carrying on cultivation in the said land. She is said to have dug a bore well in the suit land and used to cultivate the suit land by raising paddy and cotton crops. Defendant Nos.1 and 2 are the mother-in-law and father-in-law of the plaintiff and defendant Nos.3 and 4 are younger brothers of husband of the plaintiff. Defendant No.1, who is the mother-in-law also acquired agricultural land admeasuring Ac.7.12 ½ gts. in suit survey No.718 along with the plaintiff through the above said award which according to the plaintiff is on eastern side of the suit land. It is stated that since the defendants never used the said land for cultivation, all the four defendants colluded with each other and without having any right or title over the land started interfering with the possession and enjoyment of the plaintiff. Hence, the suit and I.A. came to be filed by the plaintiff.

Defendant No.1 filed her counter stating that she acquired the suit land through lok adalath award dated 14.12.2010 passed in O.S.No.44 of 2008. She denies the mutation of the name of the plaintiff in the revenue records and also issuance of pattadar pass book and title deed, basing on the said award. It is the case of defendant No.1 that the land covered by Lok Adalath Award and the land mentioned in the pattadar pass book is not the suit land. She also denied the allegation with regard to the plaintiff raising crop in the land. According to her originally land admeasuring Ac.14.25 gts., in Sy.No.718 along with some other

lands were owned and possessed by her father late Boddu Narsingam and he died intestate leaving defendant No.1, Boddu Balaiah and Boddu Sathaiah, who is the son of pre-deceased son namely Mallaiah, as his legal heirs. Defendant No.1 filed a suit for partition claiming her share in the properties left by Boddu Narsingam including the suit survey number vide O.S.No.44 of 2008. The said suit was compromised at the instance of Boddu Balaiah and the properties were partitioned and without the presence of Boddu Sathaiah an award came to be passed on 14.12.2010 in terms of the compromise. It is stated that after passing of the award there was an oral partition between defendant No.1 and the plaintiff in which defendant No.1 was given suit land towards her separate share and plaintiff was given land on eastern side of the property. It is her case that the bore well which was already existing in the portion of the land allotted to her. It is also her case that they were raising cotton crop in the said land and the plaintiff has no right over the said land. It is specifically stated in the counter that the award passed by the Lok Adalath cannot be implemented since the said order came to be passed in the absence of Boddu Sathaiah, who is having 1/3rd share. In view of the above, she submits that there are no merits in the I.A.

After considering the rival submissions made and also the documents filed, the trial Court disallowed the contention of defendant No.1 that Boddu Sathaiah has 1/3rd share in Sy.No.718 and also the argument of defendant No.1 with regard to unenforceability of the award passed by the Lok Adalath. It has been held that Sathaiah and others appeared before the Court and signed the award. The trial Court further observed

that pursuant to the award dated 14.12.2010 mutation proceedings (Ex.P2) took place, wherein the Tahsildar, Siricilla by his order dated 28.04.2012 divided the land into two portions and each admeasuring Ac.7.,12 ½ gts., the names of defendant No.1 and plaintiff was mutated consequent upon the applications made by both the parties. The said mutation came to be effected in view of the joint representation of the plaintiff and defendant No.1. However, the trial Court believed the oral partition between plaintiff and defendant No.1 made subsequent to the award of the Lok Adalath and made the interim injunction granted earlier absolute. Challenging the same the defendants preferred an appeal.

The lower appellate Court in C.M.A.No.23 of 2014 took a different view. A reading of the judgment of the lower appellate Court would show that though both the plaintiff and defendant No.1 were allotted Ac.7.12 ½ gts., each as per Exs.P1 to P6 (Revenue Records) but there are no boundaries in all the documents to prove the possession of the plaintiff. The lower appellate Court categorically held that when admittedly both the parties have jointly held the property, injunction cannot be granted against co-owner. Challenging the findings, the plaintiff preferred the present revision under Section 115 of C.P.C.

Learned counsel for the plaintiff submits that in view of the oral partition made between the parties after passing of lok adalath award, the plaintiff is entitled for temporary injunction pending suit. It is his case that plaintiff and defendant No.1 were cultivating their respective lands by raising crops without any obstruction. While things stood thus, defendant No.1 along with her children tried to encroach upon the land of the plaintiff

which is cultivated by her, which necessitated filing of the suit. He further submits that the revenue record show that the plaintiff is in possession of land admeasuring ac.7.12 ½ gts., and her name also figures in all revenue records as the person in possession of the said land.

Per contra, the learned counsel for the defendants opposed the same contending that even the name of defendant No.1 is entered in the revenue records as such the question of granting injunction against defendant Nos.1 to 4 would not arise. He submits that out of total extent of Ac.14.28 gts., the plaintiff and the defendant No.1 were allotted Ac.7.12 ½ gts., each pursuant to a compromise arrived at before the lok adalath. Unless a final decree is passed in the partition suit fixing the boundaries, the Court cannot say as to the exact location of Ac.7.12 ½ gts., belonging to the plaintiff.

A perusal of the material placed before the Court would show that O.S.No.48 of 2008 came to be filed seeking partition of the properties. The said suit was referred to Lok Adalath pursuant to a compromise arrived at between the parties therein. After following due process, the Lok Adalath award came to be passed on 14.12.2010 giving each of the plaintiff and defendant No.1 land admeasuring Ac.7.12 ½ gts. Exs.P3 to P5 which are placed before the Court would show that names of both the parties i.e. plaintiff and defendant No.1 were recorded in the revenue records as holders of land in Sy.No.718. Such being the position it is very difficult to decide as to the exact location of the land belonging to the plaintiff and also that of defendant No.1. It is true that plaintiff filed Ex.P7 showing that she has obtained electricity connection, took loan from the bank

and also raised a paddy crop, but it is to be noted that the said documents does not establish the exact location of the land of the plaintiff and also do not prove possession of the plaintiff. It is also not in dispute that the final decree proceedings in O.S.No.44 of 2008 are still pending. That being the position the question is whether an injunction can be granted against a co-owner.

In ***Prakash S.Akotkar and others v. Mansoorkha Gulabkha and others***^[1] a learned Single Judge of Nagpur Bench held as under:

“Having found the character of possession as co-owner, as indicated above, the only question that arises for determination is, whether a co-owner, in possession is entitled to an injunction of this nature against the other co-owners. Once it is found that the possession of co-owner is for the on behalf of other co-owner is for and on behalf of other co-owners, the other co-owner cannot claim injunction of this nature so as to exclude the other co-owners from exercising their right as co-owners.”

Similarly in ***Iruvaram Jayamma v. Padmavathamma***^[2] a learned Single Judge of this Court observed as under:

“The power to grant temporary injunction can always be exercised to meet the ends of justice in accordance with the principles of justice, equity and good conscience and if the balance of convenience so requires, depending on the peculiar facts and circumstances of each particular case. In the case of co-sharers or co-owners in immovable property, each one has the right irrespective of the quantum of his interest to be in possession in every part and parcel of the joint property and as such in suits between co-owners, the relief of injunction cannot be granted unless there is an invasion of a right of a co-owner by being excluded or ousted from possession. The power to grant the relief of injunction is a discretionary one exercisable in accordance with the recognized judicial

principles.”

The situation on hand is some what identical to the cases referred to above. As stated earlier, the final decree proceedings in O.S.No.44 of 2008 are pending before the Court and the documents which are placed before the Court does not anywhere give the boundaries of the land held by the plaintiff. The trial Court granted interim injunction basing on oral partition made after passing of lok adalath award but the same is strenuously denied by defendant No.1. Since the plaintiff filed an application for grant of injunction, she herself has to establish that she is in possession of the land and she cannot take the weaknesses of the defendants to establish that she is in possession of the property. In the absence of any documents showing the exact location of the suit schedule land and as the documents do not show the boundaries, the order under challenge warrants no interference. However, the trial Court is directed to dispose of the suit O.S.No.49 of 2014 as early as possible.

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.

C. PRAVEEN KUMAR, J

02.09.2015

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[\[1\]](#) AIR 1996 Bombay 36

[\[2\]](#) 1978 (2) Andh.WR 308