

HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4605 of 2014

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Date: March 24, 2015

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Between:

Barla Manohar ... Petitioner

And

1. Bethi Mallamma & another. ... Respondents

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HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4605 of 2014

ORDER:

Plaintiff in O.S.No.312 of 2013 on the file of the Court of the Principal Junior Civil Judge, Karimnagar, is the petitioner in the present revision filed under Article 227 of the Constitution of India. In the present revision challenge is to the order dated 11.11.2014 passed by the Court of I Additional District Judge, Karimnagar, in C.M.A.No.17 of 2014.

2. Heard Sri V. Ravi Kiran Rao, learned counsel for the petitioner and Sri Gudi Madhusudhan Reddy, learned counsel for the respondents, apart from perusing the material available before this Court.

3. The circumstances, leading to the filing of the present revision are as infra:

The petitioner herein instituted the suit against the respondents for perpetual injunction in respect of the plaint schedule properties. In the said suit, the petitioner filed I.A.No.819 of 2013 under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (CPC) for temporary injunction and the respondents opposed the said application by filing counter. The learned Principal Junior Civil Judge, Karimnagar, by way of order dated 17.02.2014, allowed I.A.No.819 of 2013, granting temporary injunction. As against the said order, the respondents filed C.M.A.No.17 of 2014 on the file of the Court of I Additional District Judge, Karimnagar, and the learned District Judge allowed the said appeal by way of order dated 11.11.2014, setting aside the order of injunction granted by the learned trial Judge.

4. Calling in question the validity and legal sustainability of the said order passed by the appellate Court, the present revision has been filed.

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5. Submissions/contentions of the learned counsel for the petitioner:

- (i) The order of the District Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order XXXIX Rules 1 and 2 of

CPC.

- (ii) The learned District Judge failed to consider the voluminous evidence available on record from proper perspective.
- (iii) Had the contents of the supporting affidavit and the documents enclosed been considered from proper perspective, the order under challenge would not have emanated.
- (iv) The impugned order is full of assumptions and presumptions and is completely devoid of valid and cogent reasons.
- (v) The lands of the petitioner and the respondents are quite distinct and there is a railway track between the land of the petitioner and the respondents and the petitioner is claiming the land on the other side of the railway track which is covered by a compound wall and the respondents cannot claim the land beyond the railway track on the other side of the track.
- (vi) The petitioner is claiming the land in Survey Nos.,350/B and 350/C of Arepally Village within specific boundaries under Exs.P-1 to P-4 registered sale deeds dated 03.12.2011.

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6. Submissions/contentions of the learned counsel for the respondents:

- (a) The order impugned is in accordance with the provisions of Order XXXIX Rules 1 and 2 of CPC and there is no illegality nor any jurisdictional error in the impugned order and in view of the same, the present revision is not maintainable under Article 227 of the Constitution of India.
- (b) The learned District Judge is perfectly justified in reversing the order passed by the trial Judge having regard to the material available on record.
- (c) Since the petitioner failed to show the principal ingredients of Order XXXIX Rules 1 and 2 of CPC in this case, there is no infirmity in the order under revision.
- (d) As the order passed by the learned District Judge is based on valid and convincing reasons, the same does not warrant any interference of this Court under Article 227 of the Constitution of India.

7. In the above background, now the issues that emerge for consideration of this Court are:

- (1) Whether the order passed by the learned District Judge is in accordance with the provisions of Order XXXIX Rules 1 and 2 of CPC?
- (2) Whether the order under revision warrants any interference of this Court under Article 227 of the Constitution of India?

8. The essence of the case of the petitioner/plaintiff is that he

purchased the suit schedule house plots bearing Nos.159 to 163 by way of registered sale deeds and they are situated in Survey Nos.350/B and 350/C of Arepally, Karimnagar Mandal and District, and the said lands are in continuous possession and enjoyment of the petitioner and the defendants/respondents are interfering with his possession and enjoyment without having any title or any manner of right. On the other hand, it is the case of the defendants that the petitioner is neither the owner nor the possessor of the plots bearing Nos.159 to 163 in Survey Nos.350/B and 350/C and the land claimed by the petitioner is part of Survey No.350/C and neither the petitioner nor his vendor nor his vendor's vendor has any legal right or interest in Survey No.350/C. It is the further case of the defendants/respondents herein that initially in Survey No.350, total extent was Ac.19.06 guntas and the said extent originally belonged to three brothers viz., Hanmandla Ramaiah, Hanmandla Venkaiah and Hanmandla Dharmaiah, who are the sons of one H. Rajaiah, and they partitioned the said property about 60 years back and in the said partition H. Ramaiah, H. Venkaiah and H. Dharmaiah got Ac.8.08 guntas, Ac.5.19 guntas and Ac.5.19 guntas and the same were assigned survey numbers 350/A, 350/B and 350/C respectively. It is the further case of the respondents that the land got by H. Dharmaiah in Survey No.350/C is in three bits namely Ac.1.00, Ac.2.00 and Ac.2.19 guntas and the father of the first respondent by name H. Raji Reddy purchased Ac.3.00 i.e., Ac.1.00 and Ac.2.00 bits from H. Dharmaiah by way of registered sale deeds bearing Document No.1994/1970 dated 08.07.1970 (Ex.R-2) and H. Raji Reddy, father of the first respondent executed a registered will dated 07.06.1986 (Ex.R-1), bequeathing an extent of Ac.0.26 guntas in Survey No.350/C in favour of the 2nd respondent and the Railway Authorities acquired some portion for railway track and paid compensation to the first respondent and the remaining land of Ac.0.14 guntas in Survey No.350/C is also

in possession of the first respondent. It is also the case of the defendants/respondents that the vendor of the petitioner viz., P. Sudhakar Reddy, P. Ramadevi, P. Guruva Reddy filed O.S.No.641 of 2005 for perpetual injunction against the respondents in respect of the plots 161 and 162 and the same was dismissed on 21.08.2012 (Ex.R-7) and the same is binding on the plaintiff. It is also the case of the respondents that the first respondent is the exclusive owner and possessor of 484 square yards on the southern side of railway track in Survey No.350/C.

9. The plaintiff/petitioner herein, in support of his case, filed Exs.P-1 to P-18 and on the other hand defendants filed Exs.R.1 to R-12. Exs.P-1 to P-4 are the registered sale deeds dated 03.12.2011 under which the petitioner is claiming right, title and interest in the schedule properties. Ex.P-1 document bearing No.10687/2011 dated 03.12.2011, executed by one Bandi Sambaiah covers plot No.159 in Survey Nos.350/B and 350/C admeasuring 373 square yards. Ex.P-2 document bearing No.10685/2011 dated 03.12.2011, executed by Mallarapu Kausalya covers plot No.163 in Survey Nos.350/B and 350/C admeasuring 110 square yards. Ex.P-3 document bearing No.10682/11 dated 03.12.2011, executed by Smt. Pathi Ramadevi covers plot No.162 in Survey Nos.350/B and 350/C admeasuring 145 square yards. Ex.P-4 document bearing No.10677/2011 dated 03.12.2011, executed by Pathi Sudhakar Reddy and Pathi Guruva Reddy covers plot No.161 in Survey Nos.350/B and 350/C admeasuring 215 square yards. Exs.P-10 and P-11 are the decree and judgment dated 15.11.1989 passed by the learned Senior Civil Judge, Karimnagar, in O.S.No.68 of 1981 filed by Hanmandla Raji Reddy for declaration and perpetual injunction in respect of land admeasuring Ac.3.00 in Survey No.350/C which was dismissed for default. Exs.P-15 and P-16 are the judgment

and decree passed by the learned Principal Junior Civil Judge, Karimnagar, in O.S.No.223 of 2006 filed by Bhagyanagaram Venkata Durgaiah and Mallarapu Kousalya Devi against the respondents and the petitioner is claiming plot Nos.160 and 163 from the plaintiffs in the said suit, who claimed to have purchased from Veenavanka Lachamma and others by virtue of Exs.P17 and P-18 dated 14.06.1979.

10. On the other hand, in order to substantiate their case, the respondents filed Exs.R-1 to R-12. Ex.R-1 is the registered Will deed dated 7.06.1986 in favour of the 2nd respondent executed by Hanmandla Raji Reddy, husband of the first respondent and

Ex.R-2 is the registered sale deed executed by Hanmandla Dharmaiah in favour of H. Raji Reddy and Ex.R-12 is the plaint in O.S.No.642 of 2005 filed by the vendors of plot Nos.161 and 162 in favour of the petitioner.

11. The primary purpose of granting interim relief under Order XXXIX CPC is to evolve a workable formulae by keeping in mind the *pros and cons* of the matter and by striking a delicate balance between two conflicting interests namely injury and prejudice likely to be suffered by the plaintiff in the event of refusal of the relief and the injury likely to be experienced by the defendant in the event of granting the relief. It is well settled and established proposition of law that as a matter of course a person is not entitled for the relief of injunction and discretion shall be exercised by the Court in favour of the plaintiff in the event of the same being denied it would result in any irreparable damage to the person asking for and such relief can be granted in order to meet the ends of justice.

12. In **State of Karnataka V. State of Andhra Pradesh, Food Corporation of India V. Yadav Engineer and Contractor, Wander Limited V. Antox India (P) Ltd.,, and Dorab Cowasji Warden V. Coomi Sarab Warden**, the Hon'ble Apex Court held that the power to grant injunction is discretionary as also equitable and the temporary injunction cannot be claimed as a matter of right nor Court grants such injunction as a matter of course and being an equitable relief, before deciding the injunction application, the Court would keep in mind several aspects and a Court of equity would exercise discretionary power in granting temporary injunction only if justice, equity and good conscience require to issue such order and the Court is satisfied that its intervention is necessary in the interest of justice.

13. For obtaining interim relief of temporary injunction under Order XXXIX Rule 1 CPC, a person applying for injunction has to show *prima facie* case in support of right claim, balance of convenience and irreparable loss. The existence of *prima facie* case is *sine qua non* or a condition precedent for the purpose of exercising power to grant injunction under Order XXXIX CPC. A person applying for injunction is obligated to demonstrate before the Court that in the event of refusal to grant injunction, he will have to suffer irreparable injury and he is also obligated to demonstrate that balance of convenience is in his/her favour.

14. Therefore, the courts while considering the applications filed under Order XXXIX Rules 1 and 2 CPC are required to examine as to whether the three indispensable ingredients

viz., *prima facie* case, balance of convenience and irreparable injury are present in case of a person applying for. A perusal of the orders of the trial Court as well as the lower appellate Court manifestly reveals that the courts below neither considered the evidence available on record completely nor made any effort and endeavour to examine as to whether the said necessary ingredients are present or not. Though a number of documents were filed by both sides, the courts below did not make any real endeavour to look into all the documents which have bearing on the issue.

15. In the considered and definite opinion of this Court, the learned trial Court as well as the appellate Court failed to consider all the documents and failed to record any findings as to relevancy of the same on the case on hand. The reasons assigned by the Court below in the impugned orders are highly ambiguous. The clarity in the orders passed by the courts below is conspicuously absent and lacking and the same cannot be approved by this Court. The findings of the courts below must necessarily be based on realities arrived at on the basis of material available, but not on the assumptions and presumptions. A sacred duty is cast upon the courts to consider the entire material made available by the parties thoroughly and completely and to record findings based on the same. Such exercise would undoubtedly strengthen the confidence of the people in the adjudicatory system. In the instant case courts below failed to adhere to the same and this Court finds no justification in doing so.

16. In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the orders passed by the appellate Court and the trial Court cannot be sustained and the issue requires consideration

afresh in the light of the observations made supra.

17. For the aforesaid reasons, the revision is allowed, setting aside the order dated 11.11.2014 passed by the Court of I Additional District Judge, Karimnagar, in C.M.A.No.17 of 2014 and the order dated 17.02.2014 passed by the Court of the Principal Junior Civil Judge, Karimnagar in I.A.No.819 of 2013 in O.S.No.312 of 2013 and the matter is remanded to the learned Principal Junior Civil Judge, Karimnagar, who shall dispose of I.A.No.819 of 2013 after considering all the documents available on record and pass a reasoned order without being influenced by any of the observations made either in the impugned orders or in the present order. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Till the disposal of I.A.No.819 of 2013, the parties to the litigation shall maintain *status quo* with regard to subject property. The learned Judge shall also make an endeavour to dispose of the main suit as expeditiously as possible.

18. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: March 24, 2015.

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HON'BLE SRI JUSTICE A.V. SESHA SAI

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Date: March 24, 2015

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