

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

CIVIL REVISION PETITION No.4014 of 2014

-
-
ORDER:
-

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.07-10-2014 in C.M.A.No.47 of 2013 of the III Additional District Judge, Warangal confirming the order dt.06-06-2013 in I.A.No.900 of 2012 in O.S.No.1276 of 2012 of the Principal Junior Civil Judge, Warangal.

2. The petitioners herein are defendants in the suit.

3. The said suit was filed by respondents for a perpetual injunction restraining the petitioners from interfering with the alleged peaceful possession and enjoyment of respondents over the plaint schedule property. The plaint schedule property consisted of 2 items. One of extent 650 sq. yds in Sy.No.718E (new)/726 (old) and the other of extent 560 sq. yds in the same survey number situated at Waddepally village, Hanamkonda Mandal, Warangal District.

4. Along with the plaint, the respondents filed I.A.No.900 of 2012 under Order XXXIX Rules 1 and 2 CPC to restrain the petitioners from interfering with the

alleged possession of respondents in respect of the plaint schedule property pending disposal of the suit.

5. Counter affidavit filed by petitioners opposing the same.

6. By order dt.06-06-2013, I.A.No.900 of 2012 was allowed by the trial Court and a temporary injunction was granted in favour of respondents restraining the petitioners from interfering with the peaceful possession and enjoyment of respondents over the plaint schedule property till disposal of the main suit subject to condition that respondents would not change the physical features or make any constructions in the plaint schedule property.

7. The petitioners challenged the same in C.M.A.No.47 of 2013 before the III Additional District Judge, Warangal. The lower appellate Court did not suspend the injunction and ultimately dismissed the appeal on 07-10-2014.

8. Challenging the same, this Revision is filed.

9. On 14-11-2014, this Court suspended the order of the lower appellate Court for a period of 3 weeks and the same was extended from time to time.

10. The learned counsel for petitioners contended that the orders passed by the Courts below are unsustainable

and that the trial Court erred in granting *ad interim* injunction in favour of respondents and the lower appellate Court erred in confirming the same. He sought to contend that Ex.P-7 FIR filed by respondents had not been considered by both the Courts below and that in the said document respondents had admitted that they have sold 500 sq. yds in favour of certain third parties. He also contended that respondents have based their claim for injunction on the basis of an agreement of sale dt.19-02-1992 and the said document does not pass any title to respondents. Other contentions on merits have also been raised and reference was made under A.P. Record of Rights and Pattadar Passbooks Act, 1971.

11. The learned counsel for respondents, on the other hand, contended that since the suit is basically one for perpetual injunction, possession on the date of filing of suit is relevant. He contended that both the Courts below have relied upon Exs.P-4 and P-10 pahani patrikas for the year 2011-12 and 2012-13 and found that respondents were in possession of the plaint schedule property on the date of filing of the suit. He contended that in exercise of restrictive jurisdiction of this Court under Article 227 of the Constitution of India, this Court ought not to interfere with the said findings.

12. I have noted the submissions of both sides.

13. The trial Court, in para-29 of its order, no doubt referred to Exs.P-4 and P-10 pahani patrikas which show possession of respondents to hold that respondents have made out a *prima facie* case and balance of convenience is in their favour. The lower appellate Court confirmed the said finding. The lower appellate Court further held that the names of petitioners are not reflected in either Ex.P-4 or Ex.P-10.

14. The learned counsel for petitioners did not dispute the fact that Exs.P-4 and P-10 did not disclose about the possession of petitioners and that they disclose the possession of respondents. But he however sought to contend that in view of the proceedings under A.P. Record of Rights in Land and Pattadar Passbooks Act, 1971 which have been decided subsequently, no reliance can be placed on these documents.

15. Having regard to these submissions, since the said order under the provisions of A.P. Record of Rights and Pattadar Passbooks Act, 1971 had not formed part of the record in the trial Court or lower appellate Court, I leave it open to petitioners to file the said proceedings during trial of the suit. Admittedly, from 06-06-2013 till 14-11-2014 there was a temporary injunction in favour of respondents

pending disposal of the suit.

16. Therefore, without expressing any opinion on the merits of the case, the Civil Revision Petition is disposed of directing the trial Court to decide the suit as expeditiously as possible within a period of six months from the date of receipt of a copy of this order. Till disposal of the suit, the temporary injunction granted in favour of respondents in I.A.No.900 of 2012 in O.S.No.1276 of 2012 on 06-06-2013 shall continue and the same shall be subject to the final result of the suit. It is made clear that respondents shall not change the physical features or make any constructions in the plaint schedule property till disposal of the suit and the suit shall be disposed of uninfluenced by any observations made in the order dt.06-06-2013 in I.A.No.900 of 2012 or order dt.07-10-2014 in C.M.A.No.47 of 2013 or in this order. No costs.

17. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 06-07-2015

Vsv