

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION No.2376 OF 2015

Between:

Menti Pentaiah and another.

.. Petitioners

and

Tele Peda Kovvadaiah (died) and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 06th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.2376 OF 2015

ORDER

The petitioners are the plaintiffs in O.S.No.154 of 2011 on the file of the learned Junior Civil Judge, Jangareddigudem. They filed I.A.No.920 of 2011 in the said suit under Order 39 Rule 1 CPC for a temporary injunction restraining the respondents-defendants from interfering with their peaceful possession and enjoyment over the suit schedule property. By order dated 22.04.2014, the trial Court dismissed the I.A. The order was confirmed by the learned Additional District Judge, Kovvur, West Godavari District, in C.M.A.No.6 of 2014, by order dated 23.01.2015. Aggrieved thereby, they are before this Court.

O.S.No.154 of 2011 was filed by the petitioners-plaintiffs for a permanent injunction restraining the respondents-defendants from interfering with their

possession and enjoyment over the suit schedule property. The case of the petitioners-plaintiffs, who are father and daughter, was as follows: The sister of the first petitioner-first plaintiff was the wife of the first respondent-first defendant. The other respondents-defendants were their children. The suit schedule property and some other properties originally belonged to Menti Seethamma, the mother of the first petitioner-first plaintiff and the first respondent-first defendant's wife. She got the said properties from her mother under a registered gift settlement deed dated 17.11.1957. Menti Seethamma executed an unregistered Will on 09.12.1996 bequeathing the suit schedule property to the petitioners-plaintiffs and some other properties to the wife of the first respondent-first defendant. Menti Seethamma died thereafter in the year 2003. Pursuant to the afore-stated Will, the properties were shared and the petitioners-plaintiffs were enjoying the suit schedule property with right, title and possession, by raising crops. Their names were also mutated in the revenue records. As the respondents-defendants proclaimed that they would interfere with their possession and enjoyment over the suit schedule property, they filed the suit.

By way of their written statements, the respondents-defendants contested the suit claim. They conceded that the suit schedule property originally belonged to Menti Seethamma but, according to them, she executed unregistered Will dated 11.11.1998 bequeathing all her properties to her daughter, the wife of the first respondent-first defendant. According to them, the wife of the first respondent-first defendant died intestate in September, 2005, and that they succeeded to the entire property covered by the unregistered Will dated 11.11.1998 executed by Menti Seethamma. They further claimed that they partitioned the said property under registered partition deed dated 18.12.2006 and were in actual physical possession. They also produced revenue records in their favour.

The trial Court took note of the pleadings filed by both parties in connection with the temporary injunction application, which were basically a reiteration of what had been stated by them in their suit pleadings, and found that the petitioners-plaintiffs failed to make out a *prima facie* case for grant of a temporary injunction. Holding so, the trial Court dismissed the I.A.

In appeal, the learned Additional District Judge, Kovvur, went a step further. The appellate Court took into account the fact that the first respondent-first defendant and the second respondent-second defendant had filed O.S.No.145 of 2006 before

the learned Senior Civil Judge, Kovvur, for partition of the plaint schedule properties therein. The first petitioner-first plaintiff was the first defendant in the said suit, while respondents 3 and 4-defendants 3 and 4 herein were arrayed as the second and third defendants. In the plaint filed in O.S.No.145 of 2006, the plaintiffs therein claimed that Menti Seethamma died intestate about two and half years prior to filing of the suit leaving behind her son and daughter as her legal heirs. It was on the strength of this claimed intestate succession that partition of the plaint schedule properties was sought. This suit came to be dismissed for non-prosecution thereafter but the averments made in the plaint therein clearly negated the execution of an unregistered Will by Menti Seethamma on 11.11.1998 solely in favour of her daughter, as was being claimed by the respondents-defendants in the present suit. The appellate Court therefore rendered a clear finding that the unregistered Will dated 11.11.1998 was false. On this basis, the appellate Court opined that much credence could not be given to the claim of the respondents-defendants on the strength of the registered partition deed, executed subsequently. The appellate Court however found that no documentary evidence had been adduced by the petitioners-plaintiffs as regards their claimed possession over Item No.2 of the suit schedule property and that the evidence adduced by them was not sufficient to establish their possession over Item No.1. The appellate Court therefore observed that the truth or otherwise of the contentions of the parties with regard to their possession over the suit schedule property had to be decided on a full-fledged trial, as both parties had revenue records to support their claim of alleged possession. Holding so, the appellate Court dismissed the appeal.

Heard Sri B.Chandrasekhar, learned counsel for the petitioners-plaintiffs, and Sri K.Jyothi Prasad, learned counsel for the respondents-defendants.

It is not in dispute that the suit schedule property is claimed only by the parties to this litigation. No other third party or even the Government lay a claim thereto. Therefore, it would be necessary to ascertain, even at the stage of the temporary injunction application, as to who is in possession of the said property. Leaving this question open at the interlocutory stage and reserving it for final determination in the suit would only lead to an unnecessary law and order situation if the parties are driven to assert their might against each other. The appellate Court, having undermined the claim put forth, by the respondents-defendants, of the unregistered Will dated 11.11.1998 allegedly executed by Menti Seethamma in

favour of her daughter to the exclusion of the son in the light of the contrary pleadings in O.S.No.145 of 2006, failed to notice that the plaint prayer in the said suit was not only for partition but also for separate possession. This indicated that the plaintiffs in the said suit, being respondents 1 and 2-defendants 1 and 2 in the present litigation, did not assert any independent possession at that point of time.

Though it is a fact that both parties produced revenue records in support of their respective claimed possession and, therefore, much credence could not be given to such records, the duty fell upon the Court to determine as to who was actually in possession for deciding the temporary injunction application. It is clear, as pointed out by the appellate Court, that on the strength of the unregistered Will dated 11.11.1998, the respondents-defendants created a registered partition deed, on the strength of which they secured mutation in the revenue records in their favour and also pattadar passbooks and title deeds. However, the very basis for their claim, the unregistered Will dated 11.11.1998, was shown to be false on the strength of their own pleadings in O.S.No.145 of 2006 filed by respondents 1 and 2-defendants 1 and 2. It was therefore incumbent upon them to explain as to how they came into independent possession after 2006, if at all. Unless this factual aspect was determined, the Court could not have decided one way or the other.

The orders passed by the trial Court and the appellate Court are accordingly set aside and I.A.No.920 of 2011 in O.S.No.154 of 2011 is restored to the file of the learned Junior Civil Judge, Jangareddigudem, for consideration afresh on facts and as per law. The trial Court shall allow both parties to adduce further evidence to establish their respective claims as to possession and upon due consideration of all the material facts, render a fresh decision in accordance with law.

The civil revision petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

06th OCTOBER, 2015

PGS