

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1946 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the judgment dated 01.05.2015 of the learned Judge, Family Court-cum-Additional District Judge, Khammam passed in C.M.A.No.18 of 2014. The learned Judge while allowing the said civil miscellaneous appeal had set aside the order dated 17.07.2014 of the learned Senior Civil Judge, Sathupalli passed in I.A.No.714 of 2013 in O.S.No.215 of 2013 filed under Order XXXIX Rules 1 and 2 for grant of a temporary injunction restraining the respondent/defendant from interfering with the plaintiff's peaceful possession and enjoyment of the dry land with mango garden in an extent of Ac.1.31 guntas in Sy.No.120/AA and Ac.0.06 guntas in Sy.No.122/E, Ac.0.06 guts in Sy.No.122/VU, Ac.0.06 guntas in Sy.No.122/VUU, Ac.0.01 guntas in Sy.No.123/AA and Ac.0.24 guntas in Sy.No.123/E, in a total extent of Ac.3.00 guntas in one compact block at Kallurgudem village and Vemsor Mandal, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The case of the plaintiff, in brief, is this:

The defendant is the owner of the above said dry land with mango garden. He had offered to sell the same for a consideration of Rs.2,00,000/-. The plaintiff had accepted the said offer; and, the plaintiff and the defendant had entered into a possessory agreement to sell dated 30.03.2009; and, on that day, the plaintiff had

paid the entire sale consideration; and, the defendant had delivered possession of the above plaint schedule land to the plaintiff. Since then, the plaintiff is in peaceful possession and enjoyment of the plaint schedule land. The defendant is obliged to register the sale deed as and when demanded by the plaintiff. The plaintiff's name is also entered in the revenue records as possessor of the suit schedule land. While so, in the month of March 2012, the defendant had tried to interfere with the plaintiff's peaceful possession of the suit schedule land. On 08.03.2012, the plaintiff had got issued a registered legal notice to the defendant demanding him to register the unregistered sale deed dated 30.03.2009. The defendant had issued a reply asking the plaintiff to send a copy of the unregistered sale deed said to have been executed by him in favour of the plaintiff. Again on 14.07.2012, the defendant and his wife came to the schedule property, along with some labourers and had tried to remove the mango plants, which were planted by the plaintiff in the suit land. The plaintiff had resisted the interference of the said persons with the help of the village elders and had lodged a caveat in the Court of Junior Civil Judge, Sathupalli. On 26.07.2012, the plaintiff had got filed a suit for bare injunction in O.S.No.60 of 2012 on the file of the Principal Junior Civil Judge, Sathupalli. In that suit, the plaintiff had also filed an interlocutory application in I.A.No.120 of 2012. The defendant had denied the existence of any contract between the plaintiff and the defendant. The said Court had granted a *status quo* order in that proceeding. The unregistered sale deed was impounded in that suit; and, when it was sent to the District Registrar, the plaintiff had paid the stamp duty and penalty and accordingly, the Registrar had certified the document as required under Section 42 of the Indian Stamp Act. The original document is filed in the said suit. While the *status quo* orders are in force, on 12.08.2013, the defendant and his men along with one Constable came to the suit schedule land and threatened to arrest the plaintiff and her men. The plaintiff had got issued a registered legal notice dated 13.08.2013 to the defendant stating that if the defendant repeats such acts, an application would be filed for violation of the Court orders. The defendant sent a reply stating that nobody can prevent him from entering into his land. The civil court orders are in force. On 17.11.2013, the defendant again came to the land and had tried to plant lemon plants on the Northern side portion of the suit land. On receiving information from the watchman, the plaintiff along with one Neellapala Venkat Rao and Bandi Rami Reddy went to the suit land; and, with great difficulty, they had restrained the defendant and his men. In the circumstances, the plaintiff has no option but to file the suit for specific performance and the present

application for temporary injunction.

4. The defence of the defendant, in brief, is this:

The material allegations urged by the plaintiff are all false. This defendant had never received any sale consideration and had never executed the unregistered sale agreement and delivered possession of the suit schedule land, as alleged by the plaintiff. The averment that the plaintiff is in possession of the plaint schedule land is false and invented. In the month of March, 2012, the defendant interfered with the possession of the plaintiff and that therefore, on 08.03.2012, the plaintiff got issued a notice through his Advocate are all false. Indeed, by influencing the revenue authorities and behind the back of the defendant, the plaintiff had got entered her name in the possessory column; and the issuance of notice dated 08.03.2012 is a part of the game plan of the plaintiff. The allegation that the defendant along with his wife and labourers went and tried to remove the mango plants that were planted by the plaintiff is false. The plaintiff had filed a suit for a perpetual injunction along with the petition for temporary injunction is true. The plaintiff had paid the stamp duty and penalty on the said agreement allegedly executed by the defendant may be true. The defendant along with his men and a police constable had threatened the plaintiff and her men and therefore, the plaintiff got issued notice dated 13.08.2013 is false. The plaintiff by several futile attempts had tried to knock away the valuable property of the defendant. The defendant had got issued a suitable reply dated 18.08.2013 with all facts. The allegation that on 17.11.2013, the defendant along with his supporters had entered on the suit schedule property and had tried to remove the plants is false and invented. The allegation that the plaintiff and her watchman along with Neellapala Venkata Rao and Bandi Rami Reddy of Kallurugudem village had restrained the defendant and his men from planting citrus plants is false and invented by the plaintiff. The plaintiff had not pressed the former suit by filing a memo in the Court of the Principal Junior Civil Judge and the said suit was dismissed as not pressed. No permission was granted to file the present suit. Hence, the plaintiff cannot maintain the present suit. The plaintiff has no cause of action. The defendant had purchased for a valuable consideration of Rs.98,000/- Ac.6.37 guntas of dry land out of Sy.Nos.120, 122/A and 123 of Kallurgudem revenue village of Vemsoor Mandal through an agreement of sale dated 26.05.1989 from one Tripuraneni Seshagiramma and Tripuraneni

Rama Rao residents of that village. The defendant had obtained possession having paid consideration. The vendors did not come forward for performing their part of the contract. Therefore, he had filed a suit for specific performance in O.S.No.27 of 1994 and the said suit was decreed and a sale deed was executed in favour of the defendant by his vendors. After purchasing the said land, he had planted mango grafts and the age of the mango garden is about 22 years; and, the defendant has been enjoying the usufruct of the mango garden. In addition to the land purchased under the agreement dated 26.05.1989, the defendant had got about Ac.1.20 guntas of land out of Sy.Nos.123 and 125 of Kallurugudem village and the total extent is Ac.7.39 guntas; and, out of it, he had sold Ac.1.06 guntas from Southern boundary to one Mogilipuvvu Padma, wife of Katam Raju. Rest of the mango garden is about Ac.6.33 guntas; and, the defendant had converted about Ac.4.00 guntas of mango garden into plots. The boundaries given by the plaintiff in the suit are imaginary and the suit schedule land of Ac.3.00 guntas viz., mango garden is not separate and distinct. As a matter of fact, the entire mango garden in an extent of Ac.6.33 guntas is one contiguous plot and there is no boundary separating Ac.3.00 guntas from and out of Ac.6.33 guntas of mango garden of the defendant. About Ac.1.20 guntas out of his mango garden has been recorded in the name of the brother-in-law, by name Bandi Rami Reddy and it is a part and parcel of the defendant's mango garden. The defendant has a daughter and a son; and the son of the defendant had completed his MBBS course in Bulgaria; and, he had completed his studies in the year 2009. The husband of the plaintiff got acquaintance with the defendant. In the year 2008, for the education of the defendant's son, he had borrowed an amount of Rs.1,00,000/- from the husband of the plaintiff; and at the time of the said transaction, the husband of the plaintiff took the signature of the defendant on a blank promissory note and a white paper. Out of sheer necessity, the defendant was forced to sign as demanded by the husband of the plaintiff. In the year 2009, the defendant's son had returned to India. The defendant had performed his son's marriage with a girl, who is a native of Velvadam village of Krishna District. The son of the defendant is now in U.S.A. After the marriage of the son, the defendant had repaid the borrowed amount of Rs.1,00,000/- with interest. At that time, the defendant had demanded the husband of the plaintiff to return his documents. He had only returned the signed blank promissory note and had stated that he did not take any signed white paper. At that time, there was heated exchange of words between the defendant and the husband of the plaintiff. The incident was witnessed by some elders and it was

pacified. The plaintiff's husband in the name of God had declared that there was no signed white paper in his possession. The defendant believed him. When the plaintiff had got issued a notice dated 08.03.2012 with false averments, the defendant had got issued a reply dated 09.04.2012 requesting to send a copy of the alleged sale agreement. The plaintiff did not choose to send the same and had filed O.S.No.60 of 2012 on the file of the learned Junior Civil Judge, Sathupalli with a false story. The plaintiff and her husband had created the agreement as if the defendant had sold Ac.3.00 of mango garden on 30.03.2009. The entries in the revenue records, which were manipulated and got made, are grossly illegal. The plaintiff has no *prima facie* case and the balance of convenience is also not in her favour.

5. At the time of enquiry, exhibits P1 to P21 and exhibits R1 to R 7 were marked. After full-fledged enquiry, the trial Court had allowed the application of the plaintiff. Aggrieved thereby, the defendant had preferred C.M.A.No.18 of 2014 before the court below. As already stated, the Court below had allowed the appeal and had set aside the order of the trial Court. Hence, the plaintiff is before this Court.

6. The learned counsel for the plaintiff would submit as follows: "The trial Court had considered all the relevant aspects and also the content of the copies of pahani patrikas showing possession of the plaintiff over the suit land and granted injunction as prayed for in favour of the plaintiff by passing a reasoned order. The Court below while referring to the order of the RDO and the contents thereof under exhibit R7 had erroneously interfered with the well considered order of the trial Court by not noticing the fact that the defendant did not initiate proceedings according to the procedure established by law. The court below ought to have seen that the agreement to sell under exhibit P1 coupled with entries in the pahani patrikas sufficiently established a *prima facie* case in regard to the possession of the plaintiff. The court below ought to have seen that the cause of action in a suit for injunction is different from that of a cause of action in a suit for specific performance; and, therefore, no permission is needed at the time of withdrawal of the former suit for injunction. Therefore, the plaintiff is under no legal obligation to obtain permission at the time of withdrawal of

the former suit for institution of the present suit for specific performance; and, hence, there is no legal bar for entertaining the suit for specific performance though the former suit for injunction was withdrawn by the plaintiff. The court ought to have considered a *prima facie* case in regard to the possession of the plaintiff over the suit land, which is the only criterion for granting a temporary injunction.

7. On the other hand, the learned counsel for the defendant while supporting the order of the Court below had contended as follows:

The suit agreement is created by the plaintiff and her husband in the circumstances stated in the defence of the defendant. At one breath, the plaintiff contends that it is an unregistered sale deed; and, at another breath, the plaintiff contends that it is an executory contract and seeks specific performance. In the earliest reply notice, when the defendant had demanded the plaintiff to deliver a copy of the unregistered sale deed, the plaintiff had failed to promptly supply a copy of the same for the reasons best known to the plaintiff and the said conduct of the plaintiff makes it obvious that the suit agreement is fabricated and the defence of the defendant is highly probable. The entries in the pahani patrikas are created by the plaintiff illegally and behind the back of the defendant. Therefore, on the letter given by the defendant, an enquiry was initiated by the revenue officers; and after such enquiry, the revenue officers had stated in their correspondence that the procedure as contemplated under law was not followed while entering the name of the plaintiff and that the possession over the suit land was also not verified while making such entries. It is not in dispute that the suit land is a very valuable land with mango garden of 20 years of age. The plaintiff is not in a position to explain as to why the former suit was withdrawn. The *status quo* order granted by the learned Junior Civil Judge itself would show that the plaintiff has no *prima facie* case and that the balance of convenience is in favour of the defendant. Therefore, there is no merit in the revision and the well reasoned order of the court below calls for no interference and the revision is liable to be dismissed.

8. Now, the point for determination is:

Whether the plaintiff had made out valid and sufficient grounds and had satisfied the cardinal principles for granting a temporary injunction restraining the

defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule property?

9. POINT:

9.1 The plaintiff brought the suit for specific performance styling her document as an unregistered sale deed in respect of the plaint schedule land said to have been executed by the defendant after receiving a total sale consideration of Rs.2,00,000/-. It is also the case of the plaintiff that on the said day, the defendant had delivered possession of the suit schedule mango garden to the plaintiff and that since the date of said unregistered agreement; the plaintiff is in peaceful possession and enjoyment of the plaint schedule property. It is also the case of the plaintiff that on account of the interference by the defendant and his men, the plaintiff was constrained to file earlier a suit for perpetual injunction and that in that suit an application for temporary injunction was also filed and that *status quo* orders were granted in that suit. Admittedly, that suit was withdrawn without obtaining permission of that Civil Court to institute a comprehensive suit for specific performance. Having withdrawn the former suit for injunction, the plaintiff had brought the present suit for specific performance and in that pending suit, the instant application for temporary injunction was filed. The trial Court granted temporary injunction. But, by the order impugned passed in the CMA, the said order was reversed by the Court below. The case of the defendant is that for the education of the son of the defendant abroad, the defendant had borrowed Rs.1,00,000/- from the husband of the plaintiff and that at that time, he had obtained signatures on a blank promissory note and on a white paper and that the defendant had signed on the said documents under compelling circumstances and that later, after the completion of the education and performance of marriage of his son, the defendant had discharged the said loan and that at that time on the demand of the defendant, the husband of the plaintiff had returned only the blank signed promissory note and had stated that he did not obtain any white paper with signature and that on that there was some heated exchange of words between the defendant and the husband of the plaintiff and that the matter was pacified at the intervention of elders and that the husband of the plaintiff had stated in the name of God that he was not having any paper with signature of the defendant and that later the plaintiff and her husband had created the suit agreement and had

filed the present suit after exchange of notices. It is also the specific case of the defendant that when a demand to supply a copy of the agreement was made in the reply notice of the defendant, the plaintiff had failed to furnish a copy of the suit agreement and the said conduct of the plaintiff lays bare the falsity of the claim of the plaintiff and probablizes the defence of the defendant. Even according to the plaintiff's averments, in March 2012 itself, the defendant had tried to interfere with the plaintiff's possession. The plaintiff without filing a suit for specific performance had only filed O.S.No.60 of 2012 on the file of the learned Principal Junior Civil Judge Court on 26.07.2012 for perpetual injunction and in that suit, the said Court has granted a *status quo* order in an interlocutory application without specifying what was the *status quo*. Later, that suit was withdrawn and the present suit is filed. In the plaint, the plaintiff avers that the plaintiff and the defendant entered into a contract and the defendant executed a possessory agreement, i.e., unregistered sale deed on 30.03.2009 and later the plaintiff had filed O.S.No.60 of 2012 on the file of the Court of the learned Principal Junior Civil Judge, Sathupalli and that during the pendency of the suit O.S.No.60 of 2012 when the document was impounded, the plaintiff had paid the stamp duty and penalty and had obtained a certificate from the Registrar. However, the present suit is filed for specific performance of the said unregistered agreement to sell. The learned counsel for the defendant would forcefully contend that when a *status quo* order was in force and that in spite of the said orders, the defendant had allegedly tried to interfere with the plaintiff's possession over the suit land, it is un-understandable and it is unexplained as to why the plaintiff had withdrawn the said former suit even without taking permission of that court to institute the present suit. He would also contend that if really, there was any interference as alleged by the defendant and his men in the face of status quo orders, one would expect the plaintiff to either file an application for violation of the *status quo* orders, but he did not do so. He would also submit that the plaintiff ought to have sought permission of that Court for conversion of her former suit into a suit for specific performance by seeking the amendment of the plaint as per the procedure established by law, but the plaintiff having failed to do so had strangely withdrawn that suit even without taking permission of that court. Even though, there was an attempt of interference with the possession of the plaintiff allegedly in March, 2012, this suit for specific performance was not filed within a reasonable time and only a suit for perpetual injunction was filed in July 2012 and the present suit is filed in November 2013 is the contention of the learned counsel for the defendant.

9.2 Exhibit P1 is the copy of the impounded agreement for sale dated 30.03.2009. Exhibits P2 and P3 are the office copies of the legal notices dated 08.03.2012 and 09.04.2012. Exhibit P4 is the copy of the plaint in the former suit. Exhibit P5 is the written statement in the said suit. Exhibits P6 and P7 are the office copies of legal notices dated 13.08.2012 and 18.08.2012. Exhibits P8 to P21 are the copies of pahani patrikas. Exhibit R1 is the Commissioner's warrant in I.A.No.120 of 2012 in O.S.No.60 of 2012. Exhibit R2 is the notice. Exhibits R3 and R4 are the work memoranda. Exhibit R5 is the report of the Advocate Commissioner. Exhibit R6 is the letter addressed by Tahasildar, Vemsoor and exhibit R7 is the proceedings of the R.D.O., Khammam. I have gone through the contents of the documents. No doubt, both the parties admit that the name of the plaintiff was entered in the revenue record, but the defendant relies upon the correspondence of the revenue officers to show that the name of the plaintiff was illegally entered behind his back and that at the time of entering the name of the plaintiff, neither the procedure was followed nor verification of possession was made as is borne out by the statements of the revenue officers in the correspondence. It is also his submission that it is impermissible under law to enter the name of a person in the revenue records based on an agreement to sell, as such a document, as per settled law, does not confer right, title and interest in the property. The plaintiff claims that as she is in possession, her name has been entered in the revenue records; whereas the defendant submits that the name of the plaintiff was illegally entered by striking out the name of the defendant and that such an entry is illegal. Even though the defendant had requested in his reply notice to send a copy of the unregistered possessory agreement, the plaintiff did not send a copy of the same, but had instituted the former suit for perpetual injunction. The averments now stated in the present proceedings are all not stated in the plaint in O.S.No.60 of 2012 is an undisputed fact. Though the copies of pahani patrikas (exhibits P8 to P21) were marked, they do not show the years to which they relate and the plaintiff's pleadings are also silent on this aspect. Exhibit R6, which is a letter of R.D.O., Khammam addressed to the Tahasildar, Vemsoor, on a perusal would show that the defendant had given an application dated 02.07.2012 and subsequently, there were enquiry reports of the Mandal Revenue Inspector, Vemsoor dated 02.07.2012 and 04.03.2013 and that there was also further correspondence between the officers of the Revenue Department and ultimately, the matter was referred to the AGP for legal

opinion. The said record discloses that while removing the name of the possessor, a notice ought to have been issued to the affected party before passing an order, but, the name of the plaintiff was entered in the pahani without verifying the aspect of possession and that the same was done behind the back of the defendant and as such, the name of the plaintiff ought not to have been recorded in the possessory column and hence, the Tahasildar was instructed to issue notices to both the parties and give opportunity and pass suitable orders after conducting enquiry. The letter of the RDO, which was referred to supra, also supports *ex facie* the contention of the defendant that without following the procedure and without necessary verification, the entries in the revenue records were made. When there was allegedly an interference continuously by the defendant along with his men, the plaintiff ought to have continued the suit in which there was an order of *status quo* passed by the said Court, but strangely, the plaintiff had not pressed that suit by filing a memo and had brought this suit. No explanation was forthcoming for withdrawing a suit in which there was a *status quo* order. Having analytically examined the facts and the documentary evidence, this Court is of the view that the Court below is justified in allowing the appeal and setting aside the order of the trial Court and dismissing the application of the plaintiff for temporary injunction. Having regard to the above reasons, this Court finds that the plaintiff has no *prima facie* case and that her conduct lays bare that she is not entitled to the equitable relief of temporary injunction. Accordingly, this Court holds that there is no merit in the revision and the same is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Since the suit is of the year 2013, the trial Court may decide the suit on merits and as per the procedure established by law, as expeditiously as possible, preferably within six months from the date of the receipt of a copy of this order. It is needless to mention that the suit shall be disposed of on merits without being influenced by the observations, if any, in this order.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

14th September 2015

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