

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2461 of 2014

ORDER:

The unsuccessful petitioner/plaintiff filed this revision under Article 227 of the Constitution of India assailing the orders dated 09.05.2014 of the learned Principal Junior Civil Judge, Gudur passed in IA.No.550 of 2013 in IA.No.533 of 2013 in OS.No.220 of 2013 filed under Section 151 of the Code of Civil Procedure, 1908 ('the Code', for short) seeking to grant police aid through Station House Officer, Podalakur Police Station for implementation of the temporary injunction orders dated 18.11.2013 granted in IA.No.533 of 2013.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff ('the plaintiff' for brevity) and the learned counsel for the respondents/defendants ('the defendants') for brevity. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff filed a suit against the defendants for perpetual injunction restraining the defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of items 1 to 3 of the plaint schedule property, which are said to be dry lands of an extent of Ac.2.45 cents in S.No.511-2, Ac.0.77 cents out of Ac.2.31 cents in S.No.511-1 and Ac.1.20 cents out of Ac.6.09 cents in S.No.288 situated in Navulur village of Podalakur Mandal of Guntur Registration District, more fully described in the schedule annexed to the plaint. The 1st defendant had filed a written statement resisting the suit. The said written statement was adopted by the defendants 2 to 4. The plaintiff had filed IA.No.533 of 2013 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code for grant of a temporary injunction pending final disposal of the suit. The 1st defendant had filed a counter affidavit on behalf of the defendants resisting the said

application. At the time of enquiry before the trial Court, exhibits P1 to P7 and R1 to R3 were marked and on merits, the trial Court had granted a temporary injunction in favour of the plaintiff and against the defendants restraining the defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property pending disposal of the suit. The said orders have become final. Subsequently, the plaintiff filed IA.No.550 of 2013 seeking police aid for implementation of the above said injunction orders. That application was dismissed by the trial Court on merits. Therefore, the aggrieved plaintiff is before this Court.

4. The learned counsel for the plaintiff would contend as follows: - 'The trial court was carried away by the citations which are not applicable to the facts of the case. The trial court had failed to take into consideration the facts of the case and the correct legal position. The Court is empowered to grant police aid for implementation of the temporary injunction orders granted by it whenever there are attempts of violation of the said orders of the Court and the plaintiff is prevented from enjoying the benefits of the orders of the Court. The trial Court ought to have seen that there is every necessity, in the facts and circumstances of the case, to grant police aid in the light of the facts and the complaint that the defendants had trespassed into the plaint schedule property high handedly and had abused the plaintiff in filthy language and had threatened him with dire consequences in case of failure on his part to withdraw the suit and that the plaintiff was saved by the intervention of the neighbours and that the defendants had high handedly cut and carried away portion of the jonna crop raised by the plaintiff in the plaint schedule property.

All these acts, which are high handed and illegal, were committed by the defendants in violation of the temporary injunction orders of the Court and, therefore, a report was also lodged on 22.11.2013 by the plaintiff with the Station House Officer, Podalakur Police Station. The plaintiff is not in a position to resist the high handed activities of the defendants and their men. Therefore, grant of police aid is highly essential. The fact that the defendants, who are not in possession of the property, are yet claiming to be in possession of the property, and are not honouring and obeying the orders

of temporary injunction, would show that they have no respect for law and order.

5. On the other hand, the learned counsel for the defendants would contend that the plaintiff was never in possession of the plaint schedule property and that the plaintiff is trying to enter into the plaint schedule property under the guise of the injunction orders and by seeking police aid for implementation of the said orders and that if police aid is granted the plaintiff would trespass into the property which is in possession of the defendants, and that the trial Court had rightly dismissed the petition and that there are no grounds for granting the police aid and that there is no merit in this Revision.

6. Now the point for determination is:

Whether the plaintiff had made out valid and sufficient grounds for granting police aid through Station House Officer, Podalakur Police Station for implementation of the temporary injunction orders 18.11.2013 in IA.No.533 of 2013 in OS.No.220 of 2013 on the file of the Court of the Principal Junior Civil Judge, Gudur? And, if so, whether the impugned order is liable to be set aside?

7. **POINTS:**

7.1 The basic facts necessary for consideration are already stated supra, in detail and I have also noted the submissions of both the sides. There is no dispute that on merits a temporary injunction order was granted by the trial Court in IA.No.533 of 2013 on 18.11.2013 and the said order has become final and that the said order is subsisting and is binding on the parties to the *lis*. The plaintiff contends that notwithstanding the above order, the defendants had trespassed into the plaint schedule property and had threatened him with dire consequences and that the defendants had cut and taken away a portion of the Jonna crop raised by him in the schedule lands and that the plaintiff was saved on the intervention of elders, whose names are mentioned in the affidavit filed in support of the petition, and that the defendants are interfering with the peaceful possession and enjoyment of the plaintiff over the plaint schedule property and that it is not possible for the plaintiff to resist the illegal and high handed activities of the defendants and

that unless police aid is granted, he cannot enjoy the benefits of the order of the temporary injunction granted in his favour and against the defendants. On the other hand, the defendants assert their possession over the property despite suffering an order of temporary injunction which has become final. If the contention of the defendants were to be true, they ought to have assailed the said order by following the procedure established by law. When once the temporary injunction order has become final, the defendants are bound to obey the said orders pending disposal of the suit.

7.2 Be that as it may. The trial Court refused to grant police aid by following the ratio in the decision in **Polavarapu Nagamani and others v. Parchuri Koteswara Rao and others**^[1]. From the impugned order it is clear that the decision of this Court in **Gampala Ananthaiah and others v. Kasarla Venkat Reddy and others**^[2] was brought to the notice of the trial Court and it was submitted to the trial Court that the decision in Polavarapu Nagamani's case (1st cited) was declared *per incuriam* as the Division Bench in Polavarapu Nagamani did not notice the decisions of the Supreme Court which had held that even in cases of violation of an injunction order in a suit (as opposed to a situation where only a threat of violation exists), orders of police protection may be granted. Still the trial Court relied upon the earlier decision which was held to be *per incuriam*. The trial Court had erroneously held that in paragraph 13 of the judgment in Gampala Ananthayya's case (2nd cited) this Court relied upon the guidelines passed by the Division Bench in Polavarapu Nagamani's case while in fact the learned single Judge held that Polavarapu Nagamani's case insofar as it held that the application for police protection is not maintainable if there is a violation of an injunction order passed in a suit has to be held to be *per incuriam*. Therefore, the trial Court erred in appreciating the legal position in regard to the powers of the Court in the matter of according police protection. In Gampala Ananthaiah's case, this court having regard to the precedential guidance in the decisions of the Supreme Court had held that when the plaintiff complains that the defendant is committing breach of the temporary injunction order and seeks

police protection, the Court is under an obligation to accord such protection. Therefore, the interlocutory application filed by the plaintiff seeking police protection is maintainable is not in doubt and the law is now well settled that even in cases where there is a violation of temporary injunction order granted pending disposal of the suit, orders of police protection may be granted, if the facts of the case so warrant.

7.3 Coming to the facts of the instant case the plaintiff had clearly averred the *overt acts* committed by the defendants in the affidavit and some such contentions are already referred to supra. The trial Court had observed in its orders that police protection cannot be granted in a routine manner and that except filing the self serving affidavit, the plaintiff had failed to prove that there is necessity for seeking intervention of the Court. Nonetheless, the trial Court had failed to take note of the fact that the defendants are contending that they are in possession of the plaint schedule property even though their said contention was disbelieved by the Court below while disposing of the application for temporary injunction and they were restrained by orders of temporary injunction. In the well considered view of this Court, the plaintiff is right in contending that it is not open to the defendants to allege that the plaintiff is not in possession of the plaint schedule property having suffered temporary injunction order, which has become final and is binding. The very conduct of the defendants in contending that the plaintiff is not in possession of the plaint schedule property despite the fact that they had suffered a temporary injunction order is itself indicative of the fact that the defendants are bent upon deliberately flouting the temporary injunction orders of the Court and that they are not willing to abide by the orders of temporary injunction granted by the Court; and, in such circumstances the plaintiff is entitled to protection when the court is approached for protection of the rights declared by the injunction order. The defendants under facts and in law are bound to obey the order of temporary injunction. When the plaintiff complained that the defendants are committing breach of the said order and sought police protection and when the defendants pleaded that the plaintiff is not in possession of the plaint schedule property, the trial Court was under an

obligation to accord protection. Such an order of protection is necessary to see that the Rule of Law prevails and that a judicial order like the present temporary injunction order is effectively implemented as held by this Court in Gampala Ananthayya's case. The points are answered accordingly.

8. Viewed thus, this Court finds that the trial Court was in error in not granting the police aid to the plaintiff/revision petitioner and that, therefore, there is merit in the revision.

9. The Civil Revision Petition is accordingly allowed without costs and the impugned order is set aside and IA.No.550 of 2013 in IA.No.533 of 2013 in OS.No.220 of 2013 on the file of the learned Principal Junior Civil Judge, Gudur is allowed and the Station House Officer, Podalakur Police Station is directed to grant aid and assistance to the plaintiff for implementation of the temporary injunction orders dated 18.11.2013 passed in IA.No.553 of 2013.

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

M. SEETHARAMA MURTI, J

12th June 2015
Vjl

[\[1\]](#) 2010 (6) ALT 92 (DB)

[\[2\]](#) 2014 (2) ALT 661