

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

C.R.P.No.2029 of 2010

ORDER:

This Revision Petition is filed challenging the order dt.08-02-2010 in I.A.No.557 of 2009 in O.S.No.350 of 2009 of the XI Junior Civil Judge, City Civil Court, Secunderabad.

2. The petitioners herein are defendants in the above suit. The said suit was filed by the respondent against the petitioners for perpetual injunction restraining the petitioners from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property except in accordance with law and for costs.

3. The plaint schedule property is described as House bearing No.11-4-322/20/49/1 part admeasuring 110 sq yds at Miyakunta, Chilkaiguda, Secunderabad, within specified boundaries.

4. Along with the suit, the respondent filed I.A.No.557 of 2009 under Order 39 Rules 1 and 2 CPC to restrain the petitioners from dispossessing the respondent or interfering with his peaceful possession and enjoyment of the plaint schedule property till the disposal of the suit.

5. Counter affidavit was filed by the petitioners contesting the claim of the respondent in the I.A.

6. In the said I.A., respondent filed Exs.P-1 to P-3 while petitioners filed Exs.R-1 to R-3.

7. By order dt.08-02-2010, the said I.A. was allowed.

8. Questioning the same, the petitioners filed C.M.A.No.6 of 2010 before the I Additional Chief Judge, City Civil Court, Secunderabad.

9. By order dt.23-03-2010, the said appeal was dismissed and the Order dt.08-02-2010 in I.A.No.557 of 2009 in O.S.No.350 of 2009 was confirmed. Both the trial Court as well as the appellate Court concurrently held that the respondent had *prima facie* proved that he is in possession of the plaint schedule property. The plea of the petitioners that the respondent had vacated the premises on 03-02-2009 was rejected and it was held that since the respondent was admitted to be in possession of the plaint schedule property till 03-02-2009 by the petitioners, and since the petitioners failed to produce any document to show that the respondent vacated the premises on 03-02-2009, it could be presumed that the respondent was in possession of the plaint schedule property as on the date of filing of the suit.

10. Challenging the same, the above Revision Petition was filed in this Court.

11. On 06-05-2010 the Revision Petition was

admitted and in C.R.P.M.P.No.2715 of 2010, *status quo* order was granted which was then extended from time to time.

12. Learned counsel for the petitioners contends that the petitioners are now in possession of the plaint schedule property notwithstanding the concurrent findings of fact of the Courts below in I.A.No.557 of 2009 and C.M.A.No.6 of 2010. He also pointed out that the petitioners filed C.R.P.M.P.Nos.3601 of 2012 and C.R.P.M.P.No.2716 of 2010 apart from C.R.P.M.P.No.1636 of 2011 to receive additional documents to prove the fact that the petitioners are in possession of the plaint schedule property.

13. Learned counsel for the respondent on the other hand refuted the said contention and contended that the documents now sought to be filed by the petitioners cannot be looked into because they have not been produced by the petitioners either before the trial Court when I.A.No.557 of 2009 was heard nor were they produced at the time of disposal of C.M.A.No.6 of 2010 by the lower appellate Court. He further sought to contend that the *status quo* order granted by this Court has to be construed as an order accepting the possession of the respondent.

14. In several cases, this Court has held that in matters relating to dispute regarding possession, it is the

duty of the Court to decide one way or other as to which party is *prima facie* in possession of the property and that courts are not supposed to pass orders for maintenance of “*status quo*”. It has been held that before they pass such an order, they should give a finding as to what particular ‘*status quo*’, the courts want to be maintained i.e. whether the plaintiff or the defendant is in possession and whose possession is to be maintained. It has been held that if without deciding the *prima facie* factual possession, the court directs maintenance of status quo, there is every chance of the mightier party taking law into his hands and ousting the weaker party and that an order directing maintenance of *status quo* is capable of greater harm than even a wrong order granting or refusing temporary injunction. (See **Chirapareddi Veeramma v. Sk.Mahboob**^[1])

15. After hearing the submissions of both sides and perusing the material relied upon by both the courts below, I am of the view that the concurrent findings of both the trial Court as well as lower appellate Court that it was the respondent who was in peaceful possession and enjoyment of the plaint schedule property were rendered on the basis of material available on record before the said Courts. The said findings cannot be said to be perverse and so do not warrant interference by this Court. The fresh material which the petitioners now seek to file in the Revision Petition cannot be considered because it

was not filed before the Courts below.

16. Having regard to the fact that from 08-02-2010, there was an order of temporary injunction granted in favour of the respondent which was also confirmed on 23-03-2010 in C.M.A.No.6 of 2010 and since the said order of injunction has not been suspended by this Court in this Revision Petition, I am inclined to hold that the *status quo* order passed by this Court has to be understood to mean that it was the respondent who was in possession of the suit schedule property and this possession shall not be disturbed by the petitioners.

17. Therefore, since the said *status quo* has been in force for almost five years, while dismissing this Revision Petition, this Court directs the trial Court to decide the suit within a period of six months from the date of receipt of a copy of this order. Pending the disposal of the suit, the temporary injunction order granted by the trial Court as well as the lower appellate Court in favor of the respondent shall continue. C.R.P.M.P.Nos. 3601 of 2012, 2716 of 2010 and 1636 of 2011 are dismissed giving liberty to the petitioners to file the documents enclosed thereto in the trial Court during trial and the same can be considered by the trial Court subject to proof, relevancy and admissibility. The trial Court shall decide the suit uninfluenced by any observations made in the I.A.No.557 of 2009 or C.M.A.No.6 of 2010 or in this order.

18. Accordingly the CRP is dismissed. No costs.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

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