

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

CIVIL REVISION PETITION No.2882 of 2014

-

-

ORDER:

-

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.10-04-2014 in C.M.A.No.20 of 2013 of the I Additional District Judge, Chittoor reversing the order dt.18-04-2013 in I.A.No.940 of 2012 in O.S.No.592 of 2012 of the I Additional Junior Civil Judge, Chittoor.

2. The petitioners herein are defendants in the above suit. The respondent/plaintiff filed the suit for a perpetual injunction restraining the petitioners from in any way interfering with his alleged peaceful possession and enjoyment of the plaint schedule property and from evicting him forcibly without resorting to due process of law and for costs.

3. In the plaint filed by respondent, he pleaded that under an oral tenancy he was occupying the suit schedule premises belonging to

1st defendant/1st petitioner and was paying Rs.1,500/- p.m. as rent, which was later enhanced to Rs.2,250/- p.m; that he was paying rent regularly and paying electricity charges to the premises; and he also got a licence from Panchayat Office for running a mess. He alleged that petitioners wanted to evict him without following due process of law constraining him to file the suit.

4. The 1st petitioner filed a written statement denying the plaint

averments. He also denied the tenancy pleaded by respondent and contended that respondent's brother by name one G.Subramanyam was his tenant and he took only one room in the schedule premises as tenant in 2007 for a period of 5 years. He contended that the said Subrahmanyam agreed to vacate the shop in the month of December, 2012 and to deliver vacant possession but instead the respondent, who is the brother of said Subramanyam, obtained the documents of Subramanyam and filed the suit to harass him.

5. Along with the suit, respondent had filed I.A. No.940 of 2012 under Order XXXIX Rule 1 and 2 CPC to grant interim injunction restraining the petitioners from evicting him from the petition schedule premises till disposal of the suit.
6. It is stated by the learned counsel for both sides that there was an order of *status quo* in favour of respondent initially in the said I.A., but after contest, the said I.A. was dismissed on 18-04-2013 on the ground that respondent had not filed any scrap of paper to show that he is a tenant of 1st petitioner.
7. Challenging the same, the respondent filed C.M.A.No.20 of 2013 before the I Additional District Judge, Chittoor.
8. By order dt.10-04-2014, the said C.M.A. was allowed and it was directed that *status quo* granted to the petitioner would remain in force during pendency of the suit. It is not disputed that even from the date when C.M.A. was filed, there was a *status quo* order in favour of respondent.
9. Challenging the order in C.M.A., the petitioners have preferred this Revision under Article 227 of the Constitution of India.

10. The learned counsel for petitioners submits that the judgment of the lower appellate Court is perverse and that the lower appellate Court did not keep in mind the principles laid down in **A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam**. He contended that there was no tenancy in favour of respondent at any point of time, but the lower appellate Court, merely on the ground that respondent was in possession of the property, granted the *status quo* order referred to above. The learned counsel for petitioners would also contend that the brother of respondent had given an affidavit in his favour stating that he was in possession of property and there was no tenancy between respondent and the petitioners.
11. The learned counsel for respondent, on the other hand, refuted the above contentions and pointed out that there is no error of jurisdiction in the order passed by the lower appellate Court; that the lower appellate Court had correctly appreciated the evidence on record and come to conclusion that respondent is in possession of the petition schedule property, and therefore Revision be dismissed.
12. From facts narrated above, it is clear that there has been a *status quo* order granted in favour of respondent from 28-12-2012 onwards and even though I.A.No.940 of 2012 was dismissed after contest, pending C.M.A., there was a *status quo* order and the said order continued till the C.M.A. was decided on 10-04-2014. Thus, for the past 2½ years there has been a *status quo* order protecting the possession of respondent. It is stated by counsel on both sides that the trial in the suit has

commenced.

13. The plea of respondent is that there is an oral tenancy between himself and 1st petitioner. It is understandable how the trial Court in I.A.No.940 of 2012 could therefore insist for documentary evidence of tenancy. The evasive pleadings of the petitioners in the written statement as to the possession of property in question and the lack of a specific denial by them that respondent is in possession of the property clearly gives rise to an inference that respondent is in possession of the plaint schedule property. It is this fact which the lower appellate Court has relied upon while deciding the C.M.A.
14. Although the learned counsel for petitioners has relied upon the decision in **A.Shanmugam** (1 supra) with regard to matters to be kept in mind while deciding a suit for injunction, I am clearly of the opinion that the principles laid down therein would clearly apply while finally deciding the suit.
15. In the present case, the respondent is a tenant under an oral tenancy granted by 1st petitioner is a question of fact which can only be decided after trial in the suit. Any finding on the issue of tenancy given at this stage in favour of either party would seriously prejudice the other party at the time of decision in the suit. Therefore, I refrain from going into the said aspect.
16. I am of the opinion that the lower appellate Court has appreciated the contention of both sides and also considered the documents filed by respondent and accepted his possession and granted *status quo* order. Having regard to the fact that *status quo* order in favour of the respondent has been there for a

quite some time, at this stage, it will not be proper to express any opinion on the merits of the case of either parties. The scope of jurisdiction of this Court under Article 227 of the Constitution of India, being limited, I do not think that this is a fit case to interfere with the order passed by the lower appellate Court.

17. Therefore, the Revision Petition is dismissed. I make it clear that any observations made by this Court in this order or by the lower appellate Court in C.M.A. No.20 of 2013 or by the trial Court in I.A.No.940 of 2012 shall not be taken into account by the trial Court while deciding the suit, and the suit shall be decided uninfluenced by these observations. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 04-06-2015

Vsv/*