

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

CIVIL REVISION PETITION No.4996 of 2014

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ORDER:
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This Civil Revision Petition is filed challenging the order

dt.12-09-2014 in C.M.A.No.6 of 2012 of the Judge, Family Court-cum-IV Additional District and Sessions Judge, Adilabad confirming the order dt.19-10-2012 in I.A.No.206 of 2012 in O.S.No.65 of 2012 of the Junior Civil Judge, Adilabad.

2. The petitioner herein is defendant in the suit.

3. The respondent/plaintiff filed the above suit against petitioner for a perpetual injunction restraining the petitioner from interfering with his alleged possession and enjoyment of extent Ac.5.00 in Sy.No.432/40 located within the specified boundaries at Jainath Shivar, R/M.Jainath, Adilabad District. He contended that he was assigned this land by the State Government, that petitioner is his relative, and taking advantage of the fact that the respondent is old, the petitioner is trying to usurp his property and interfering with his possession and enjoyment of the land. He alleged that on 29-03-2012

when he was cleaning the land, the petitioner tried to dispossess him and therefore he filed the suit.

4. Along with the suit, he filed I.A.No.206 of 2012 seeking temporary injunction restraining the petitioner from enjoying with his peaceful possession and enjoyment of the plaint schedule property.

5. The respondent filed a counter opposing the grant of interim relief to petitioner. In the counter affidavit, he stated that Sy.No.432 of Jainath Shivar is Government land of extent Ac.500.00; that the plaint schedule is not in Sy.No.432/40; that he is in possession of a piece of land in Sy.No.432; and he had been assigned the said land by the Government and declared as pattedar. He contended that he was cultivating the disputed land and not respondent. He denied the right and title of respondent over the plaint schedule property. He alleged that respondent had not given the correct boundaries of the plaint schedule property. He contended that the documents filed by respondent do not pertain to the plaint schedule property. He stated that the land belonging to his father is situated to the south of plaint schedule land, that land in S.No.432 situated on the southern side of suit land does not belong to him and it belongs to his father, and he is cultivating the same as owner thereof. He also

stated that a suit was filed by respondent against petitioner's father in O.S.No.106 of 2009 and later the said suit was withdrawn and the order passed therein operates as *res judicata*.

6. Before the trial Court, the respondent filed Exs.A-1 to A-16 and petitioner filed Exs.B-1 to B-9.

7. By order dt.19-10-2012, the trial Court allowed the said I.A. It held that the documents filed by the petitioner show that he is pattadar of Ac.5.00 in Sy.No.432/60 while suit was filed by respondent with regard to Sy.No.432/40 which is a different parcel of land; the respondent is seeking injunction for land in Sy.No.432/40 and not against land in Sy.No.432/60; respondent's possession of land in Sy.No.432/40 is proved by pahanis for the years 1991-92 to 2011-12; therefore he is in possession of the suit land; the judgment in O.S.No.106 of 2009 will not operate as *res judicata* because the said suit was filed by the petitioner against Shaik Mohammad who is not a party in the present case; no material is placed by petitioner to prove that the boundaries mentioned by the respondent are false; and therefore, the respondent is entitled to temporary injunction restraining the petitioner from interfering with his possession and enjoyment of the plaint schedule land.

8. Questioning the same, the petitioner filed C.M.A.No.6 of 2012 before the Judge, Family Court-cum-IV Additional District and Sessions Judge, Adilabad. In the said appeal, petitioner filed Exs.A-1 to A-7 while respondent filed Exs.B-1 to B-6.

9. The said appeal was dismissed on 12-09-2014 by the lower appellate Court. It held that the pleadings of the parties and the material placed on record by them indicate that the petitioner and the respondent are claiming land in different Survey Numbers; that the respondent is claiming land in Sy.No.432/40 while the petitioner is claiming land in Sy.No.432/60 with different boundaries; that the documents submitted by the respondent establish that respondent is the owner, pattedar and possessor of land in Sy.No.432/40 having acquired the same by way of assignment from the Government; the respondent is not claiming any right in the land in Sy.No.432/60 of Jainath village; the question whether the land claimed by the respondent in the suit falls in Sy.No.432/60 or not is a matter to be decided during trial; and the trial Court was right in rejecting the plea of *res judicata* raised by the petitioner.

10. Challenging the same, this Revision is filed.

11. Heard Sri V.Manohar Rao, learned counsel for

petitioner and Sri S.Chandra Sekhar, learned counsel for respondent.

12. Learned counsel for petitioner contended that the total extent of land in Sy.No.432 of Jainath village is Ac.500.00; there is no sub-division of Sy.No.432 at all; in the absence of sub-division, the suit itself is not maintainable; and therefore the Courts below ought to have insisted on the respondent to prove positively the location of the land claimed by him. He contended that since the respondent had already filed a suit O.S.No.106 of 2009 against the father of the petitioner and withdrew it without seeking permission from the Court, the suit O.S.No.65 of 2012 is barred by Order II Rule 2 CPC. He also contended that the respondent had changed the boundaries from the earlier suit to the present suit. He also contended that the extent of Sy.No.432/40 is only Ac.2.00 but was corrected as Ac.5.00 and that the respondent was trying to occupy petitioner's land in Sy.No.342/60 admeasuring Ac.5.00 under the guise of the interim injunction order granted by the trial Court.

13. Learned counsel for respondent refuted the above contentions and contended that both the Courts have correctly appreciated the evidence on record and held that the respondent was entitled to temporary injunction

pending disposal of the suit and these findings of fact do not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

14. I have noted the submissions of both sides.

15. The land claimed by the respondent is in Sy.No.432/40 of extent Ac.5.00 within specific boundaries mentioned therein. In the counter affidavit filed by the petitioner, the petitioner has only stated that the plaint schedule property does not have Sy.No.432/40. The petitioner admits that the land in Sy.No.432 was Government land but alleges that it is of extent Ac.500.00 and many persons are cultivating the same. He also admits that the Government had assigned land in this Survey Number to various persons and had given patta certificates to them. He also claimed that he was cultivating a piece of land in the said Survey Number but failed to give the extent thereof. He further contended that he is the owner, possessor and pattedar of the disputed land but not the respondent.

16. The pahanis for the year 1988-89, 1989-90, 1990-91, 1991-92 and 1992-93 which have been marked as Exs.A-6, A-5, A-4, A-2 and A-3 respectively (filed in the lower appellate Court by the petitioner) indicate that there is a sub-division of Sy.No.432 and indicate that they relate

to Sy.No.432/40. The trial Court as well as the lower appellate Court have observed that the documents filed by the petitioner show that his claim is for an extent of Ac.5.00 in Sy.No.432/60.

17. In fact along with the Revision, the petitioner has filed a pahani for the year 1978-79 relating to Sy.No.432/33 which also shows the possession of the respondent. This document goes against the plea of the petitioner and there was no sub-division of Sy.No.432.

18. Although there appears to be a correction with regard to the extent of land in Sy.No.432/40 in the pahanis of 1991-92 and 1992-93, whether the said corrections were made after following the due procedure or not is a matter to be gone into at the time of trial. But they can be relied upon to *prima facie* accept the contention of the respondent that he is in possession of the plaint schedule property. In any event the trial Court after examining the pahanis filed before it (Exs.A-2 to A-13) for the period 1991-92 to 2011-12 has categorically held that they prove the possession of the respondent in respect of the plaint schedule property. Ex.A-15 is a letter given by the Tahsildar, Jainath reiterating that the respondent's name is shown as possessor in the pahanis for 2010-11 in respect of Ac.5.00 in Sy.No.432/40. No material has been

placed before this Court by the petitioner to disagree with the finding of the trial Court that these documents prove the possession of the petitioner.

19. The trial Court as well as the lower appellate Court have also observed that the documents filed by the petitioner show that his claim is for an extent of Ac.5.00 in Sy.No.432/60. Since the petitioner is claiming land in Sy.No.432/40, a different sub-division number, *prima facie* it appears that the lands claimed by both parties, are different.

20. The contention based on Order II Rule 2 C.P.C was not advanced by the petitioner in the trial Court or in the lower appellate Court and so the petitioner cannot be allowed to raise the said issue for the first time in Revision before this Court. The pleadings in O.S.No.106 of 2009 filed by respondent against the Shaik Mohammad have not been placed before me although they appear to have been marked by the petitioner in the trial Court. In the absence of the same, the contention of the petitioner that the suit O.S.No.65 of 2012 is barred by Order II Rule 2 C.P.C, cannot be entertained.

21. I am of the opinion that both the trial Court as well as the lower appellate Court have correctly appreciated the evidence on record and come to the conclusion that the

respondent was entitled to a temporary injunction pending disposal of the suit and their orders do not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

22. I do not find any merit in the Revision and it is accordingly dismissed. No costs.

23. However, the trial Court shall decide the suit uninfluenced by any observations made by it in I.A.No.206 of 2012 or by the lower appellate Court in C.M.A.No.6 of 2012 or by this Court in this Revision.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 25-08-2015

Vsv/