

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No. 2591 OF 2015

ORDER:

This revision is filed under Article 227 of the Constitution of India against the order dated 01-05-2015 passed in C.M.A.No. 14 of 2014 on the file of the Court of VII Additional District Judge, Bodhan (for short, 'the Appellate Court'), whereunder the order dated 20-10-2014 passed in I.A.No. 168 of 2014 in O.S.No. 58 of 2014 on the file of the Court of Junior Civil Judge, Bodhan (for short, 'the trial Court'), was confirmed declining to grant temporary injunction during pendency of the suit.

2. The petitioner was the petitioner-plaintiff and the respondents were the respondents-defendants before the trial Court. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this order.

3. The petitioner filed the suit for grant of mandatory injunction directing the defendants to remove illegal construction on eastern side of the plaintiff's house bearing No. 1-3-177 at Azam Gunj, Bodhan; to stop further construction by the defendants like arranging window, ventilator or any other construction on eastern side of the plaintiff's house and to restrain the defendants and their men from causing any sort of interference with the schedule property. The petitioner in the said suit filed I.A.No. 168 of 2014 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short, 'C.P.C.') for grant of temporary injunction alleging that the respondents are raising construction against the approved plan without leaving setback on the eastern side of the petitioner's house and that they are arranging windows to obstruct light and air into the house of the plaintiff from eastern side. Therefore, the petitioner prayed to grant temporary injunction during pendency of the suit.

4. The respondents resisted the claim of the petitioner on the ground that they are raising construction in accordance with the approved plan; they purchased the property under Ex.R1 from Bodhan Municipality; they are in possession and enjoyment of the property; thereby, they did not infringe or invade the legal right of the petitioner more particularly did not obstruct light and air to the house of the petitioner from eastern side; the petitioner has no *prima facie* case, balance of convenience and will not sustain irreparable loss in case no injunction is granted; and, therefore, the petitioner is not entitled to claim temporary injunction during pendency of the suit.

It is further contended that the petitioner encroached an extent of 4 x 135' towards eastern side. Therefore, the petitioner, being an encroacher, is not entitled to claim an equitable relief of temporary injunction during pendency of the suit and prayed for dismissal of the petition.

5. During enquiry before the trial Court, no witnesses were examined on either side but marked Exs.P1 to P9 on behalf of the petitioner and Exs.R1 and R2 on behalf of the respondents.

6. Upon hearing argument of both counsel and considering documentary evidence on record, the trial Court declined to grant temporary injunction having found that no *prima facie* case is established by the petitioner and the petitioner will not sustain loss much less irreparable loss.

7. Aggrieved by the order passed by the trial Court in I.A.No. 168 of 2014, the petitioner, being unsuccessful, preferred C.M.A.No. 14 of 2014 before the Appellate Court which ended in dismissal.

8. Aggrieved by the order in C.M.A.No. 14 of 2014, the present revision petition is filed raising several contentions mainly contending that the petitioner is in occupation of 4 x 135' of site belonging to Municipality and she is entitled to purchase the same as per G.O.Ms.No. 194/1981 dated 06-03-1981 but the respondents have no title to the property. When the petitioner

is in possession and enjoyment, she is entitled to claim temporary injunction against the person who had no better title than her but the trial Court did not consider the same in proper perspective and committed an error. Therefore, the petitioner prayed to grant temporary injunction setting aside the decree and decretal order passed by the Appellate Court.

9. During the course of argument, learned counsel for the petitioner would contend that the petitioner is in occupation of 4 x 135' of site on eastern side belonging to Municipality. Though the petitioner is an encroacher, she is entitled to protect her possession till she is duly evicted by due process of law and placed reliance on ***M.Kallappa Setty Vs. M.V.Lakshminarayana Rao***^[1]; ***Chota Lal Vs. Bholaram Agarwal and others***^[2]; and ***G.Ramaiah Vs. Ahmed Badruddin and another***^[3].

10. *Per contra*, learned counsel for the respondents would contend that in the absence of proof of possession over 4 x 135' on eastern side of the petitioner's site, the petitioner is not entitled to claim temporary injunction and the petitioner, being an encroacher, is not entitled to claim equitable relief of temporary injunction during pendency of the suit.

11. Considering rival contentions and perusing material available on record, the only point that arises for consideration is thus:

"Whether the trial Court and the Appellate Court exercised discretion while dismissing the petition under Order XXXIX Rules 1 and 2 of C.P.C., if not, whether this Court can interfere with the order under challenge?"

12. **In Re. Point:**

Admittedly, the petitioner purchased a house under registered sale deed and the site on its eastern side belongs to Bodhan Municipality. Bodhan Municipality passed a resolution proposing to sell the property to the occupier of the land on eastern side. The sole contention of the petitioner is that on account of raising construction without leaving setback of 4' on

eastern side, the right of the petitioner to enjoy light and air is infringed. According to the petitioner, she trespassed into land of 4 x 135' on eastern side which is shown in black colour in the rough sketch filed along with the suit. The respondents are raising construction just by the side of land of the petitioner shown in the rough sketch and such construction would infringe the right of the petitioner. The site shown as Municipal Council land of the plaintiff in the rough sketch admittedly belongs to Bodhan Municipality but Municipality is not a party to the suit. The respondents purchased eastern side land under registered sale deed marked as Ex.R1 and obtained approval of plan for proposed construction of building marked as Ex.R2. These two documents would show that the respondents became owners by virtue of Ex.R1 and started raising construction strictly adhering to the approved plan by Bodhan Municipality. The space between the construction being raised by the respondents and the house of the petitioner exclusively belongs to Municipality and, in such a case, question of infringement or invasion of legal right of light and air of the petitioner from eastern side would not arise. Even otherwise, when the petitioner is claiming right of light and air, it is an easement by prescription under Section 15 of the Indian Easements Act, 1882 (for short, 'the Act of 1882'). Unless the petitioner is able to show that she has been enjoying right of light and air for a period of twenty years, she is disentitled to claim relief of permanent injunction on account of prescription of her right of easement and, without seeking declaration, she is disentitled. Apart from that, the petitioner is an encroacher and, therefore, she is not entitled to claim equitable relief of temporary injunction during pendency of the suit under Order XXXIX Rules 1 and 2 of C.P.C. If it is a case of threat of dispossession, the petitioner is entitled to protect her possession by obtaining a prohibitory order of injunction but the present case is totally on a different footing. Therefore, the principles laid down in the judgments referred *supra* have no application to the present facts

of the case since the petitioner is not claiming protection to her possession.

13. As seen from the facts, the respondents are raising construction beyond the projection of sunshade and almost touching the sunshade of the petitioner's house but the sunshade is projected towards eastern side into open space allegedly in occupation of the petitioner as trespasser. Therefore, the petitioner has no right in the site covered by the projection of sunshade towards eastern side.

14. It is settled principle of law that when the petitioner claiming temporary injunction during pendency of the suit has to plead and prove that she got *prima facie case*, balance of convenience is in her favour and sustains irreparable loss in case no injunction is granted. In the present case, the petitioner trespassed into the land belonging to Bodhan Municipality and claiming temporary injunction to restrain the purchaser of the property on eastern side of the petitioner's house. The petitioner, being trespasser of the land belonging to Bodhan Municipality, is not entitled to claim equitable relief. Therefore, I find no *prima facie case* in favour of the petitioner. Similarly, the alleged construction would not infringe or invade the legal right of the petitioner of enjoying light and air from eastern side because there is a gap of 4' between the construction and the respondents' and the petitioner's house. In such case, light and air cannot be obstructed and, therefore, question of sustaining irreparable loss by the petitioner in case no injunction is granted does not arise. The principles laid down in the above judgments have no application to the present facts of the case for the reason that the respondents did not make any attempt to dispossess the petitioner.

15. Considering the present facts and circumstances of the case, I find that the trial Court and the Appellate Court did not exceed their jurisdiction and exercised their discretion within the limits of law to decline temporary injunction during pendency of the suit. The jurisdiction of this Court under Article 227 of the Constitution of India is limited and it is supervisory in

nature. The revisional Court can exercise jurisdiction to keep the subordinate Courts or tribunals within their limits while passing orders but, in the present case, I find no excessive exercise of discretion or failure to exercise discretion conferred on the trial Court and the Appellate Court. Thereby, the order warrants no interference of this Court while exercising power under Article 227 of the Constitution of India. Consequently, the revision is devoid of merits and deserves to be dismissed. The observations or findings, if any, recorded in this revision petition are only for limited purpose of deciding the present revision and, therefore, the trial Court is directed to decide the suit uninfluenced by the observations or findings recorded hereinabove.

16. In the result, the civil revision petition is dismissed. Pending miscellaneous petitions in this revision, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 01-09-2015.

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[\[1\]](#) AIR 1972 SC 2299
[\[2\]](#) 1997 (3) ALD 444
[\[3\]](#) 1989 (1) APLJ 452