

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4450 of 2013

ORDER:

Defendants in O.S.No.33 of 2011 on the file of the Court of Junior Civil Judge, Vemulawada, Karimnagar District are the petitioners in the present revision filed under Article 227 of Constitution of India.

In the present revision challenge is to the judgment and decree, dated 06-08-2013 passed by the Court of the learned Senior Civil Judge, Siricilla in C.M.A.No.1 of 2013 filed by the respondent/plaintiff herein.

Heard Sri C. Damodar Reddy, learned counsel for the petitioners and Sri P.V. Narayan Rao, learned counsel for the plaintiff/respondent apart from perusing the material available before the Court.

The facts and circumstances, in nutshell, leading to filing of the present revision are as under:

The respondent herein instituted O.S.No.83 of 2011 on the file of the Junior Civil Judge, Vemulawada for perpetual injunction in respect of the suit schedule property of Ac.0-27 gts., situated in Sy.No.203/B of Chinna Achampalli village, Gangadhara mandal, Karimnagar District. Along with the suit plaintiff/respondent herein filed I.A.No.253 of 2011 under the provisions of Order 39 Rules 1 and 2 of C.P.C. for temporary

injunction in respect of the schedule property.

Resisting the said applications, defendants/petitioners herein filed a counter-affidavit. The learned Junior Civil Judge, Vemulawada, by way of an order, dated 30-11-2012, granted order of *status quo*. As against the said order the plaintiff/respondent herein preferred C.M.A.No.1 of 2013 on the file of the court of the Senior Civil Judge, Siricilla under the provisions of Order 43 Rule 1 of the C.P.C. The learned Senior Civil Judge, by virtue of an order dated 06-08-2013, allowed the said appeal, granting temporary injunction in favour of the plaintiff/respondent herein while setting aside the order of *status quo* passed by the trial Court.

Calling in question the validity and legal sustainability of the said order passed by the learned Senior Civil Judge in C.M.A.No.1 of 2013, the present revision has been filed.

It is contended by the learned counsel for the defendants/petitioners herein that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit and object of provisions of Order 39 Rules 1 and 2 of C.P.C. It is further contended by the learned counsel that the lower appellate Court grossly erred in meddling with the order passed by the trial Court, asking the parties to maintain *status quo*. It is nextly contended by the learned counsel that the learned Senior Civil Judge did not properly consider the material available before the Court and did not appreciate the matter from proper

perspective. It is also contended by the learned counsel that the learned Senior Civil Judge totally erred in granting temporary injunction to the respondent/plaintiff as the plaintiff herein does not have any property within the boundaries shown in the schedule property. It is further contended by the learned counsel that there is absolutely no valid reason for the learned Senior Civil Judge to disturb the well-considered order passed by the trial Court. It is also contended by the learned counsel that the link document of the plaintiff/respondent herein demonstrates that there are absolutely no merits in the case of the plaintiff/respondent herein. It is further contended that if the Commissioner is appointed the realities in the issue would surface and it would be helpful for the Court to arrive at the correct and just conclusion.

On the contrary, it is argued by the learned counsel for the plaintiff/respondent herein that the learned Senior Civil Judge is perfectly justified in granting injunction in favour of the respondent herein. It is nextly contended by the learned counsel that the documents filed by the plaintiff and that the documents available on record clinchingly and categorically show that the plaintiff/respondent herein is in possession of suit schedule property. It is also submitted by the learned counsel that as the revenue records support the case of the respondent herein, the plaintiff/respondent is entitled for protection by way of injunction. It is also argued by the learned counsel that earlier the defendants/petitioners herein filed I.A.No.271 of 2011 before the Court below, seeking appointment of Advocate Commissioner for noting down the physical features of the schedule land and the

said application was dismissed by the learned Junior Civil Judge by way of an order, dated 20-12-2011 and the said order became final as the defendants/ petitioners herein did not assail the validity of the said order. In support of his submissions and contentions learned counsel for the respondent places reliance on **GUDLA SURYANARAYANA REDDY @ MAJOR SURI @ NGS SWAMY AND OTHERS V. GUDLA KANAKA RAO AND OTHERS**^[1] and **VALLURUPALLI JAGEDEESWARA RAO V. VYTALA SATYANARAYANA AND OTHERS**^[2].

In the above background now the issues that emerge for consideration of this Court in the present revision are:

1. *Whether the order under revision is in accordance with the provisions of Order 39 Rules 1 and 2 of the C.P.C.?*
2. *Whether the order passed by the learned Senior Civil Judge, which is impugned in the present revision warrants any interference of this Court under Article 227 of the Constitution of India?*

A perusal of the material available before this Court manifestly discloses that the respondent herein instituted the present suit for perpetual injunction and along with the suit he filed I.A.No.253 of 2011, seeking temporary injunction and in support of his case the plaintiff/respondent herein filed Exs.A1 to A10. The defendants/petitioners herein opposed the said application by way of filing counter and the defendants filed Exs.B1 to B7 in order to substantiate their case.

The learned Junior Civil Judge, Vemulawada, by way of

order, dated 30-11-2012, granted order of *status quo*. A perusal of the said order passed by the learned Junior Civil Judge candidly discloses that the learned Judge at paragraph No.14 of the said order came to a conclusion that the possession of the plaintiff is believable. The learned Judge also observed that the documents filed by the petitioners and the respondents show the name of the petitioner as pattedar and possessor over the suit land. The learned Junior Civil Judge also observed that the plaintiff got *prima facie* case. At this juncture it is appropriate to refer the judgment of this Court in ***GUDLA SURYANARAYANA REDDY @ MAJOR SURI @ NGS SWAMY AND OTHERS V. GUDLA KANAKA RAO AND OTHERS (1 supra)***, wherein this Court at paragraph No.6 held that where the relief of interim injunction is sought, the Court, *prima facie*, has to see who is in possession of the suit property as on the date of filing of the suit and the balance of convenience. This Court in the said judgment also held that when two parties claim that each of them is in possession of the suit property, the matters would further complicate if the Court does not decide one way or the other as to which party is *prima facie* possession of the suit property and that mere grant of interim injunction will not amount to deciding the rights of the parties and the rights of the parties would only be decided after full fledged trial and after recording the evidence.

But in the present case the learned Junior Civil Judge granted order of *status quo* without deciding the application in one way or the other. The said exercise undertaken by the learned Junior Civil Judge, in the considered opinion of this Court, is not in accordance with the principles laid down in the above-referred

judgment.

Assailing the order passed by the learned Junior Civil Judge, the plaintiff/respondent herein carried the matter in C.M.A.No.1 of 2013. The learned Senior Civil Judge, Siricilla thoroughly and meticulously considered the entire evidence on record and arrived at a conclusion that the respondent herein is entitled for the order of injunction.

The learned Senior Civil Judge took into consideration Exs.B3 to B7 also and recorded a categorical finding that the plaintiff/respondent herein is entitled for relief under Order 39 Rules 1 and 2 of the C.P.C. The learned Senior Civil Judge also recorded a finding that all the three ingredients of Order 39 Rules 1 and 2 of the C.P.C. viz., *prima facie* case, balance of convenience and irreparable loss are in favour of the plaintiff/respondent herein.

There is absolutely no dispute with regard to the reality that earlier the defendants/petitioners herein filed I.A.No.271 of 2011 on the file of the court of the learned Junior Civil Judge, Vemulawada under the provisions of Order 26 Rule 9 of the C.P.C. seeking appointment of an Advocate Commissioner for noting down the physical features of the suit land.

The learned Junior Civil Judge, by way of an order, dated 20-12-2011, dismissed the said application and defendants/petitioners herein did not assail the said order. It is a

settled and well established preposition of law that unless the order under challenge suffers from fundamental infirmity and jurisdictional error, the jurisdiction of this Court under Article 227 of the Constitution of India cannot be invoked. In the considered opinion of this Court in the present revision the petitioners herein have failed in pointing out any such jurisdictional error in the order passed by the learned Senior Civil Judge.

In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that there are no merits in the present revision and this Court also does not find any reason to meddle with the order passed by the learned Senior Civil Judge.

For the aforesaid reasons, the Civil Revision Petition is dismissed. There shall be no order as to costs.

However, it is made clear that the learned trial Judge shall dispose of the suit without being influenced by any of the observations made either in the impugned orders or in the present order, as expeditiously as possible.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SETHA SAI, J

February 24, 2015

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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February 24, 2015

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