

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3626 of 2015

-
-
-

ORDER:

-
-

The unsuccessful defendants had filed this revision under Article 227 of the Constitution of India assailing the orders dated 20.07.2015 of the learned Senior Civil Judge, Sathupalli of Khammam District passed in C.M.A.No.6 of 2011. The learned Senior Civil Judge while dismissing the said appeal had confirmed the order and decretal order dated 08.04.2008 of the learned Junior Civil Judge, Madhira of Khammam District passed in I.A.No.274 of 2007 in O.S.No.246 of 2007 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for grant of a temporary injunction restraining the defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of Ac.11.37 guntas in three extents, but, in one compact block situated at Garlapadu village of Bonakal Mandal, more fully described in the schedule annexed to the plaint and the petition.

2. I have heard the submissions of the learned counsel for the petitioners/ defendants ('the defendants', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts that lead to the filing of the present revision petition by the defendants may be stated, in brief, as follows:

The sole plaintiff brought the aforementioned suit against the defendants for a perpetual injunction. The defendants having filed a written statement are resisting the suit. In that suit, the plaintiff had filed the before mentioned interlocutory application for grant of a temporary injunction. The defendants having filed a counter

affidavit resisted the said application. At the time of enquiry, in the first instance, only exhibits P1 to P3 were marked on the side of the plaintiff and no exhibits were marked on the side of the defendants. The trial Court by an order dated 08.04.2008 allowed the application of the plaintiff and had granted a temporary injunction as prayed for while extending the earlier interim orders granted on 23.10.2007 till the disposal of the suit. Feeling aggrieved of the said orders, the defendants had filed C.M.A.No.6 of 2011; and, that C.M.A was dismissed by the learned Senior Civil Judge, Sathupalli, by orders dated 22.02.2013. Feeling aggrieved of the said orders, the defendants had filed C.R.P.No.1253 of 2013 before this Court and this Court, by orders dated 07.08.2014, had allowed the said revision and had set aside the order of the learned Senior Civil Judge and remitted the matter to the learned Senior Civil Judge for fresh disposal on merits and in accordance with the procedure established by law. After such remand, the defendants had filed forty-two documents on their side. No further documents are filed on behalf of the plaintiff. On merits, the learned Senior Civil Judge, had passed the impugned order dated 20.07.2015 dismissing C.M.A.No.6 of 2011 and confirming the order of the trial Court dated 08.04.2008, whereby a temporary injunction is granted in favour of the plaintiff in respect of the plaint schedule property pending final disposal of the suit. Therefore, the unsuccessful defendants are before this Court.

4. The learned counsel for the defendants would contend as follows:

The order passed by the Court below is contrary to the facts and settled principles of law. The Court below had failed to examine the documents filed before it in detail and had failed to record a finding with reasons in regard to the existence or otherwise of a *prima facie* case in favour of the plaintiff before granting a temporary injunction in her favour. The Court below had failed to see that as per the settled legal position, the plaintiff is obliged under law not only to establish a *prima facie* case, which is *sine qua non* but also must show balance of convenience in her favour and further establish that irreparable injury would ensue in case injunction is not granted in her favour. The law as stated is well settled in **Kashi Math Samsthan v. Shrimad Sudhindra Thirtha Swamy, P.Veerabhadrapa Setty and another v. Polliki Chandrahas** and **Ajay Mohan v. H.N.Raj**. The Court below ought to have seen that the plaintiff in the suit for perpetual injunction ought to have pleaded entitlement of the plaintiff to the property and also the basis for claiming such relief,

but such averments showing entitlement or basis are conspicuously absent in the pleadings of the plaintiff. The plaintiff having failed to show her possession much less lawful possession over the property as an owner is not entitled to an injunction as prayed for, as per the ratio in the decision in **Hanumanthappa v. Muninarayanappa**. The Court below had failed to consider that the plaintiff had filed only exhibits P1 to P3 and no other documents; whereas, the defendants had filed overwhelming documentary evidence to establish their case. The documents, particularly pahanies relied upon by the plaintiff pertain to a period of few years, which is prior to the suit and the said documents were manipulated in collusion with the Tahasildar. The same were cancelled by the revisional authority by proceedings dated 20.06.2012. Therefore, exhibits P1 to P3 have no probative value. This Court while disposing of the earlier revision filed by this defendant had directed the Court below to dispose of the civil miscellaneous appeal afresh after taking into consideration the documents of the defendants as well. The defendants had produced their documents as additional evidence, but, the court below did not advert to the contents of the material documents and had confirmed the orders of the trial Court in a mechanical and in an erroneous manner. The approach of the Court below to the controversy is not on proper lines. A reading of the order of the Court below would show that the Court below had observed that the defendants ought to have filed the affidavit of the vendor of the plaintiff. The said observation would show that the onus of proof is wrongly cast on the defendants though it is for the plaintiff to prove her lawful possession and incidental title to her property in this suit for perpetual injunction even at the interlocutory stage. The specific contention of the defendants is that the plaint schedule property is not the property purchased by the plaintiff. The defendants along with this revision had filed several material documents, which the plaintiff had suppressed and failed to produce. The plaintiff is not entitled to the equitable relief of temporary injunction. Hence, the Court below ought to have allowed the appeal of the defendants and ought to have set aside the order of the trial Court.

5. The learned counsel for the plaintiff while supporting the order of the Court below had stated as follows:

Exhibits P1 to P3 sufficiently established the lawful possession of the plaintiff over the plaint schedule land for over several years. The Courts below have rightly

considered the lawful possession of the plaintiff, which is a vitally important aspect in an application for grant of a temporary injunction and had then granted an injunction order having been satisfied that the plaintiff is not only having a *prima facie* case but also the balance of convenience in her favour and further established irreparable injury that would ensue if no injunction is granted in her favour. As could be seen from the order of the Court below, an interim order was granted on 23.10.2007 and was in force till the trial Court had allowed the interlocutory application for temporary injunction and extended the said orders till disposal of the suit. Subsequently, the civil miscellaneous appeal earlier filed by the defendants was dismissed. The Civil Revision Petition filed by them was allowed and the CMA was remitted to the Court below for fresh disposal on merits. Again, on merits, the Court below had passed the order impugned after considering the documents on both the sides in a proper perspective and also the facts in an accurate manner. Therefore, except for the period the interim order remained under suspension, pursuant to the order of this Court, since 2007, the plaintiff is enjoying interim/temporary injunction orders granted in her favour. The order of the RDO canceling the entries in the pahani patrikas in favour of the plaintiff are unreasoned and unsustainable orders and that order was passed without going into the merits of the matter and without conducting any enquiry. It is observed by the RDO that it is evident that rival parties have been claiming title in respect of the same property in the suit pending on the file of the learned Junior Civil Judge, Madhira and that the scope of enquiry before him is limited and he has no mechanism to probe into the truthfulness of the documents relied upon by both the parties and that therefore, the matter has to be decided by the civil Court. Having so observed, he had erroneously cancelled the passbook and title deed book granted in favour of the plaintiff. The said order has not become final and is under challenge. The defendants 1 and 2 herein and two others had filed a writ petition in W.P.No.34753 of 2014 on the file of this Court seeking a writ or order or direction particularly a writ of *mandamus* to declare the action of the respondents particularly respondents 3 to 5 herein in threatening the petitioners with implicating them in criminal cases and warning them not to enter in the land of the petitioners to an extent of Ac.11.31 guntas in Sy.nos.89/A/1, 89/A/2 and 70/A/1 situated in Garlapadu revenue village in Bonakal mandal of Khammam District and helping the 6th respondent therein (plaintiff) and her personnel to enter and take the cotton raised by the petitioners as arbitrary, illegal and unconstitutional and consequently direct the respondents not to interfere

in the land dispute of the petitioners and 6th respondent in respect of land to an extent of Ac.11.31 guntas in survey nos.89/A/1, 89/A/2 and 70/A/1 situated in Garlapadu revenue village in Bonakal Mandal of Khammam District. It is not in dispute that the said writ petition was dismissed by this Court. The defendants are not disputing the right, title and interest of the plaintiff over Ac.2.32 guntas of land in Sy.No.89/AA/2. Since the orders of the RDO have not become final, reliance placed on exhibits P1 to P3 by the Courts below is correct and cannot be found fault. The injunction order, which is in favour of the plaintiff for a long time needs no interference at this stage by this Court as the trial Court has already taken up the trial of the suit and the suit is part-heard and is likely to be disposed of within a short period from now. Therefore, the appeal may be dismissed directing the trial Court to expedite further trial and decide the suit as early as possible.

6. Now, the points for determination are:

1) Whether the plaintiff had made out valid and sufficient grounds and had satisfied the cardinal principles for sustaining the temporary injunction order granted in her favour by the trial Court and confirmed by the Court below?

2) Whether any grounds are made out by the defendants for allowing this revision and for setting aside the order of the Court below?

7. POINTS:

7. (a) The facts leading to the filing of this revision by the defendants and the contentions of both the parties are already stated supra, in detail.

7. (b) The case of the plaintiff is this:

The plaintiff is the owner, pattedar and possessor of the suit schedule land in three different extents but in one compact block situated at Garlapadu village.

Recognising her long possession and ownership, the revenue authorities had issued pattadar pass book and title deed book in her favour. She had filed pattadar passbook, ROR and CC of pahanies for the years 2006-2007, 2007-2008 establishing her lawful possession. The defendants have no manner of right, title and interest over the said property. Since the defendants had tried to dispossess the plaintiff from the suit schedule land on 18.10.2007, she having resisted their illegal acts with difficulty had brought the suit to protect her lawful possession and enjoyment and to restrain the defendants from interfering with her lawful possession and enjoyment over the suit schedule land. She has got *prima facie* case and balance of convenience in her favour and if no injunction is granted, she would be put to irreparable loss.

7. (c) In the defence of the defendants, while denying the pleaded case of the plaintiffs, they had *inter alia* stated as follows:

The case of the plaintiff that she is the owner of the plaint schedule property in a total extent of Ac.11.31 guntas is not correct. The suit is brought with a *mala fide* intention to grab the property of the defendants. The plaint averments are invented. The defendants 1 and 2 had purchased, long time back, a part of the plaint schedule property from one of the pattedards, by name K.Gopala Krishna. From the date of the said purchase, they are cultivating the lands purchased by them by raising various crops. The plaintiff had also purchased some part of the land from the joint pattedards. However, she did not purchase Ac.11.31 gunts. The plaintiff in active collusion with the revenue people had got made false entries in the revenue records behind the back of the defendants. Having learnt about the illegal entries in the revenue records made at the instance of the plaintiff, a legal notice was got issued by the defendants to the Mandal Revenue Officer, Madhira. Basing on the created passbook and the copies of revenue records with false entries, the plaintiff had filed the suit and also an application for temporary injunction and had obtained an ad interim injunction order by misrepresenting the facts and misleading the trial Court. The defendants are in possession of the land that was purchased by them. The boundaries of the schedule land are not correct.

7. (d) The plaintiff had filed copy of pahani patrika, the copy of ROR and the title

deed book in respect of the suit schedule land. The said documents on a perusal *ex facie* lay bare the possession of the plaintiff. No doubt, by an order dated 20.06.2012, the RDO had cancelled the said documents. This order was passed long after the suit was instituted and during the pendency of the suit. The only reason assigned for cancelling the documents of the plaintiff is that both the parties are making rival claims in regard to the very same property and that a civil suit is pending in a competent court and that the RDO is not having jurisdiction to enquire into the matter and the jurisdiction to decide title is vested in the civil Court. While so observing the passbook and the title deed book issued by the Tahasildar, Bonakal Mandal in favour of the plaintiff are cancelled. The said order has not become final as the same is under challenge. The defendants are admitting in their defence that the plaintiff had also purchased some property from the joint pattedar. They are denying the extent purchased by the plaintiff. They did not specifically plead in their defence as to what is the extent purchased by the plaintiff from the joint pattedar. Though they contend that they had also purchased a part of the suit schedule land from one of the joint pattedars by name K.Gopala Krishna, they did not give the details of their sale deeds, the extents of the land purchased by them etcetera. Exhibit A39, as per the appendix of evidence annexed to the order of the court below is a copy of the registered sale deed bearing Document no.3266 of 2007. The said sale deed dated 06.10.2007 in favour of the 1st defendant is executed by Kommineni Gopala Krishna in respect of Ac.1.20 guntas of land in sy.No.89/A2. Similarly, exhibit A40 is the copy of registered sale deed bearing Document no.3265 of 2007. It is a document dated 06.10.2007 executed in favour of the 2nd defendant by K.Gopala Krishna in respect of Ac.1.00 guntas in Sy.No.89/A1. Apart from the two registered sale deeds, the defendants had filed copies of pahani patrikas from 1990-91 onwards to 2006-07 and some cist receipts and a copy of first information report in case in Crime no.191 of 2009. The defendants did not plead about these two sale deeds in their defence specifically except stating that they had purchased the property from K.Gopala Krishna. The Courts below having noted the contents of exhibits P1 to P3 had recorded a finding that the said documents *prima facie* establish the possession of the plaintiff and that therefore, in the facts and circumstances of the case, the plaintiff is entitled to a perpetual injunction in respect of the plaint schedule property in three different survey numbers, but in one compact block and within the common boundaries. As already noted, the learned counsel for the defendants had fairly submitted that they are not disputing the title of the plaintiff

insofar as Ac.2.32 guntas in Sy.No.89/AA [A2]. The defendants are also not claiming any right over an extent of Ac.3.07 guntas in Sy.No.70/A, which is one of the items of the plaint schedule property. The other item in the plaint schedule property is Ac.5.32 guntas of land in Sy.no.89/A/2. Further, there is an injunction order in favour of the plaintiff since the year 2007 and till date except for a period the order was under suspension, pursuant to the orders of this Court. Moreover, the trial in the suit is at an advanced stage and the suit is likely to be disposed of within a span of few months. Having regard to the reasons, this Court finds no ground calling for interference with the order of the Court below confirming the order of the trial Court.

7. (e) Viewed thus, this Court finds that the civil revision petition is devoid of merit and is liable to be dismissed. However, the trial Court shall dispose of the suit, which is part-heard, on merits and in accordance with the procedure established by law, as expeditiously as possible and preferably before the end of 31st October 2015 uninfluenced by any observations made by any of the courts including this Court in the interlocutory orders.

8. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

18th September 2015

RAR