

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

CIVIL REVISION PETITION No.3091 of 2015

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.15-06-2015 in C.M.A.No.78 of 2012 of the Principal District Judge, Warangal reversing the order dt.13-06-2012 of the

II Additional Junior Civil Judge, Warangal in I.A.No.607 of 2011 in O.S.No.555 of 2011.

2. The petitioner and respondent Nos.1 to 3 are siblings and are children of late Khaja Nizamuddin. Their mother's name was Ashrafunnissa Begum.

3. The subject matter of this litigation is a house bearing No.15-05-168 situated at Papaiahpet, Warangal. The old Municipal number of this house was 15/410.

4. The mother of the parties was the owner of this property. Their father died on 10-11-1987. Under separate proceedings on 08-07-1994, portions of the above property were mutated in the names of respondent Nos.1 to 3 and the portions

were referred to as 15/410, 15/410/1 and 15/410/2.

5. While so, the petitioner filed O.S.No.2 of 2001 before the

II Additional Junior Civil Judge, Warangal seeking a perpetual injunction restraining respondent Nos.1 to 3 from interfering with his alleged peaceful possession and enjoyment of the suit schedule property, which is premises No.15/410 (new Municipal

No.15-5-168). This suit was tried along with O.S.No.1181 of 2000, initially filed by Ashrifunnisa Begum, petitioner and respondent Nos.1 to 3 as plaintiffs against other children of Ashrifunnisa Begum in respect of the same property seeking a perpetual injunction. Respondent Nos.1 to 3 however later got themselves transposed as defendant Nos.4 to 6 in O.S.No.1181 of 2000. A decree was passed on 03-04-2010 in O.S.No.2 of 2001 and a perpetual injunction restraining respondent Nos.1 to 3 was granted and the latter were restrained from interfering with the alleged peaceful possession and enjoyment of the petitioner over the property, which was subject matter of O.S.No.2 of 2001. In the said judgment, a plea raised by respondent Nos.1 to 3 regarding an oral Hiba dt.29-01-1993 of their mother was taken note of and was also considered.

6. Subsequent to the decision in O.S.No.2 of 2001, it

appears that the petitioner approached the Warangal Municipal Corporation

(4th respondent herein) and on 18-01-2011 proceedings in Roc.No.A6/20662/2010 were issued by the said Corporation canceling the earlier proceedings issued on 08-07-1994 not only allotting house No.15-5-168, 15-5-168/1 and 15-5-168/2 but also retaining the original house No.15-5-168 in the name of Khaja Ashrafunnisa Begum, who had died in the meantime.

7. Questioning the same, the respondent Nos.1 to 3 filed O.S.No.555 of 2011 before the II Additional Junior Civil Judge at Warangal and to declare the same as null and void and to restore the earlier assessment.

8. Pending suit, they filed I.A.No.607 of 2011 to grant interim suspension of the said order in respect of the plaint schedule properties, which were portions of the old house No.15/410 which were earlier mutated in their name in the year 1994. *Inter alia* they contended that 4th respondent cannot transfer or change the name of the owner on the basis of a decree in O.S.No.2 of 2001 which is a suit for bare injunction, since admittedly the petitioner did not have any title document in his favour, and more particularly when appeals against the judgment in O.S.No.2 of 2001 and O.S.No.1181 of 2000 are pending.

9. This was opposed by petitioner, who asserted that certain findings had been given while deciding O.S.No.2 of 2001 and O.S.No.1181 of 2000 in his favour; and therefore the 4th respondent was entitled to pass the order dt.18-01-2011 restoring the name Khaja Ashrafunnisa Begum as the enjoyer of the premises No.15-5-168.

10. By order dt.13-06-2012, the trial Court dismissed I.A.No.607 of 2011 holding that there is a decree in O.S.No.1181 of 2000 and O.S.No.2 of 2001 in favour of petitioner, which had not been stayed in A.S.Nos.62 of 2010 and 63 of 2010 by the V Additional District Judge, Warangal and therefore the proceeding dt.18-01-2011 issued by 4th respondent cannot be said to be *per se* illegal. It also recorded that mutation can be effected on the basis of a declaration by a Court about ownership.

11. This was questioned by respondent Nos.1 to 3 in C.M.A.No.78 of 2012 before the Principal District Judge, Warangal.

12. The said appeal was allowed by order dt.15-06-2015. The lower appellate Court, however took a view that the judgment in O.S.No.1181 of 2000 and O.S.No.2 of 2001 had not attained finality; both these suits were filed only for a perpetual injunction; there was no specific direction in the judgment passed therein, which could

have laid a foundation for the 4th respondent to issue proceedings

dt.18-01-2011; and therefore the 4th respondent should have shown some restraint before acting upon the request of the petitioner in modifying the mutation in its records. It held that as per the Hyderabad Municipal Corporation (Registry of the transfer of Ownership of properties in the Assessment Book) Rules, 1965 (for short "the Rules") mutation can be carried out only in cases of absolute transfer of title or in consequence of a decree of a Civil Court or due to succession; in the present case there was only a decree for bare injunction which had not even attained finality; and on the basis of some observations made in judgment in O.S.No.1181 of 2000 and O.S.No.2 of 2001, the 4th respondent could not have issued the proceedings dt.18-01-2011. It even gave a finding about collusion between petitioner and the officials of 4th respondent since the officials of 4th respondent had issued ExsP-22 and P-23 on 17-11-2011 collecting taxes from the petitioner. It observed that by issuing proceedings dt.18-01-2011, the 4th respondent had caused irreparable loss and injury to respondent Nos.1 to 3 warranting suspension of the said proceedings pending disposal of the suit. It therefore directed disposal of the

suit within six months while suspending the proceedings dt.18-01-2011 of 4th respondent.

13. Challenging the same, this Revision is filed.

14. The learned counsel for petitioner Sri P.Mehar Srinivasa Rao contended that the order passed by the District Judge is contrary to law; grant of relief of suspension amounts to practically allowing the suit; that in the common judgment in O.S.Nos.1181 of 2000 and 2 of 2001 there was a finding that petitioner was entitled to a share out of the suit schedule property; since respondent Nos.1 to 3 were parties in the said suit and the order therein is binding on them, they cannot be allowed to challenge the proceedings dt.18-01-2011 of the 4th respondent.

15. Learned counsel for respondents Nos.1 to 3, Sri G.Rama Chandra Reddy, on the other hand, supported the orders passed by the lower appellate Court. He contended that respondent Nos.1 to 3 had even approached the Corporation after the impugned proceedings dt.18-01-2011 was issued to restore the *status quo* ante as in 1994, but the 4th respondent informed them that they should settle the dispute by approaching the Civil Court; that the petitioner had even executed a gift deed in favour

of his wife on 25-06-2011 and in collusion with 4th respondent, got the disputed property mutated in her name and is raising constructions.

16. I have noted the submissions of both sides.

17. The issue in the suit is whether 4th respondent was correct in altering the mutation in Municipal Records in respect of the suit schedule properties on the basis of a decree of injunction obtained by petitioner in O.S.No.2 of 2001 and O.S.No. 1181 of 2000 dt.03-04-2010 of the II Additional Junior Civil Judge, Warangal.

18. The 4th respondent's right to effect to mutation flows from the above referred Rules. It is not disputed that the said Rules provide for mutation to be carried out only in cases of absolute transfer of title or in consequence of a decree of a Civil Court or on account of succession. In the present case, there is no document of transfer of title in favour of petitioner. The decree of Civil Court obtained by petitioner is only in a suit for injunction filed by him against respondent Nos.1 to 3. It is settled law that title to the property is only incidentally to be gone into in such suits and any finding given therein as regards title is not conclusive between the parties. In any event, the

judgment and decrees in O.S.Nos.1181 of 2000 and 2 of 2001 have been questioned in A.S.Nos.62 of 2010 and 63 of 2010 before the V Additional District Judge, Warangal. Therefore, the said decisions have not attained any finality.

19. In this scenario, it was not open to 4th respondent to alter vide proceedings dt.18-01-2011, the mutation affected in the name of respondent Nos.1 to 3 in its records under proceedings Roc.No.A6/8184/94, Roc.No.A6/8183/94 and Roc.No.A6/8182/94 dt.08-07-1994 in favour of respondent Nos.1 to 3 and restore the name of Khaja Ashrafunnisa Begum, their mother, as the occupant in house No.15-5-168 by canceling the bifurcation orders of the said property into 15-5-168, 15-5-168/1 and 15-5-168/2.

20. Without noticing the nature of decrees in O.S.Nos.1181 of 2000 and 2 of 2001, the II Additional Junior Civil Judge, Warangal erred in dismissing I.A.No.607 of 2011 and his order was therefore rightly reversed by the Principal District Judge, Warangal in C.M.A.No.78 of 2012.

21. As regards the contention of the learned counsel for petitioner that suspending the proceeding dt.18-01-2011 would amount to allowing main relief in the suit is

concerned, the said contention has no basis for the reason that *prima facie*, the said order appears to be contrary to Rules referred to above, particularly when the decree being relied upon by the petitioner had not attained finality and was admittedly in challenge in A.S.Nos.62 of 2010 and 63 of 2010 before the V Additional District Judge, Warangal. The petitioner cannot be allowed to take advantage of such a proceedings, which are *prima facie* contrary to law to the detriment of respondent Nos.1 to 3. So granting relief of suspension of the said proceedings by the lower appellate Court was certainly warranted in the facts and circumstances of the case.

22. I therefore do not find any merit in the Revision and it is accordingly dismissed confirming the order dt.15-06-2015 in C.M.A.No.78 of 2012 of the Principal District Judge, Warangal.

23. However, the trial Court is directed to dispose of the suit uninfluenced by any observations made by it in I.A.No.607 of 2011 or by the Principal District Judge, Warangal in C.M.A.No.78 of 2012 or by this Court in this order. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 08-09-2015

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