

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5628 OF 2016

ORDER:

1) The present Civil Revision Petition came to be filed under Article 227 of the Constitution of India, challenging the order dated 11.08.2016 passed in C.M.A. No.12 of 2013 on the file of the III Additional District Judge, Tirupati, confirming the order passed in I.A.No.925 of 2009 in O.S.No.112 of 2009 on the file of the Senior Civil Judge, Srikalahasthi, wherein an application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, requesting the court for grant of temporary injunction came to be rejected.

2) A perusal of the material on record would show that O.S.No.112 of 2009 came to be filed before the Court of Senior Civil Judge at Srikalahasthi, seeking permanent injunction restraining the defendants or anybody on their behalf from interfering in any manner with the peaceful possession and enjoyment of the plaint schedule property by the plaintiffs. A written statement came to be filed on behalf of 1st defendant, denying the averments made in the plaint. Pending the said proceedings I.A.No.925 of 2009 came to be filed seeking grant of interim injunction. The averments in the affidavit filed in support of the I.A., would show that the petitioners claim to be the absolute owners of the plaint schedule lands having clear, absolute, right, title with joint possession and enjoyment of the same. The plaintiffs state

that they have jointly purchased the schedule property from the lawful owners by name Chengalvaraya Natesa Reddy and others of Pudukuppam village through a registered sale deed dated 22.08.1981 for a valid consideration of Rs.21,000/- and both of them were inducted into possession. It is their case that the Revenue officials issued pattadar pass book and title deed in favour of the 2nd plaintiff on 10.08.1994. It is the case of the plaintiffs that on 07.12.2009 the defendants tried to interfere with their rights by entering into their land through the passage situated on the North side of the plaintiff schedule land. It is said that except the said passage there is no other way to go to their lands. It is alleged that the defendants having no subsisting right or possession over the plaintiff schedule property are trying to illegally interfere with the property in question. Hence, the plaintiffs filed the I.A., stating that irreparable loss would be caused if no interim injunction is granted restraining the defendants from interfering in any manner with the peaceful possession and enjoyment of the plaintiff schedule property.

3) A counter came to be filed on behalf of the respondents denying all the averments made in the Petition. It is urged that the petitioners are trying to knock away some portion of the land of respondents by making a cart track in the land of the respondent misusing the order of the *status quo* granted by the Court. It is prayed that if the police protection as sought for by the petitioners is

granted, there is every likelihood of petitioners misusing the same. After considering the rival submissions made and referring to the documents filed, the trial court dismissed the same. Challenging the same, the plaintiffs filed C.M.A.No.12 of 2013, which was also dismissed. Aggrieved by the same, the present Revision came to be filed.

4) The petitioners/plaintiffs claim that the passage on the northern side has been in existence since time immemorial and except the said passage there is no other passage to go to their lands. Reiterating the averments made in the affidavit filed in support of the I.A., the learned counsel for the petitioners would submit that there is no other way to the land of the petitioners and his plea of existence of no other way is supported by Advocate-Commissioner's report. The same is strongly denied by the learned counsel for the respondents.

5) The defendants in the written statement stated that the 1st plaintiff is having land towards West of 1st item of schedule property and South and West of 2nd item of the schedule property. With a view to knock-away the schedule mentioned property, the plaintiffs are making every effort to interfere with the possession and enjoyment of the 1st defendant and 5th defendant over the schedule mentioned property. It is an admitted fact that the defendants herein filed O.S.No.91 of 2009 for grant of permanent injunction and

I.A.No.667 of 2009 seeking grant of temporary injunction against the plaintiffs herein. An order of status quo was granted in the said I.A. The defendants herein further stated that there is a way leading to the lands of the plaintiffs on the North of the schedule mentioned property in the forest lands and as the said way takes long distance to reach their land, the plaintiffs are making illegal attempt to occupy the schedule mentioned land by way of filing the suit.

6) Exs.P-1 to P-3 i.e., Original registered sale deed, Pattadar pass book and title deed stands in the name of the 2nd petitioner, which shows that the petitioners are in possession and enjoyment of the schedule property, by having right and title. A reading of the averments in the counter does not anywhere indicate that the respondents were denied right over the plaint schedule property. But it shows as if the respondents are causing obstruction to the petitioners for passing through that pathway situated on the northern side of the property so as to enter into their land. An Advocate-Commissioner who has been appointed in I.A.No.937 of 2011 in O.S.No.112 of 2009, visited the schedule property, noted down the physical features in the presence of counsel for both sides and with the assistance of Mandal Surveyor noticed existence of cart track. He prepared a rough sketch and submitted the same along with his report. The report shows that there is a Cart track running from east to west, covering the three survey Numbers i.e., 237, 238 and 239.

The report also indicates existence of an alternative cart track on southern side; and both cart tracks are freely accessible from the highway. The Commissioner also found three granite stones and the dried thorny fencing which was blocking the northern side cart track running from east to west direction. The relevant portion of the report, is as under :-

"I found the mango garden in Survey No..237, 238 and 239 of Pudukuppam village and they are contiguous one from East to West direction. All the three sides of the above survey numbers are Reserve forest. There is a high way to the Eastern side of this lands running from North to South direction. There is cart track leading from high way road point running from east to west direction covering the above three survey numbers i.e., 237, 238 and 239 mango garden on the northern side as well as on the southern side.

I submit that the northern side cart track became foot track about 200 to 300 feet from point shown as X in my rough sketch. The distance between the northern side cart track and southern side cart track i.e., between A & B is about one furlong. Both the Northern side and southern side cart track are freely accessible from the high way.

I further submit that I found three granite stones and also the dried thorny fencing blocking the northern side cart track running from east to west direction. From point shown in the rough sketch the cart track became foot track which shown in my rough sketch.

I further submit that the age of the mango trees are about 20 to 30 years. But the mango saplings found near by the granite pillars are about 2 to 3 years."

7) In view of the above report, which discloses existence of a way to the land of the petitioners, I am not inclined to consider the request of the petitioners and the Revision is liable to be dismissed.

8) Accordingly, the Civil Revision Petition is dismissed. However, since the suit is of the year 2009, the trial court is directed to dispose of the suit within a period of 3 to 6 months from the date of receipt of the order. No costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

C. PRAVEEN KUMAR, J

Date:09.12.2016

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