

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

C.R.P.No.429 of 2016

ORDER:

This revision, filed under Article 227 of the Constitution of India, by the defendants in O.S.No.774 of 2014, on the file of the Court of the Additional Senior Civil Judge, Ongole, challenges the Judgment and Decree dated 15.12.2015, passed by the Court of the First Additional District Judge, Ongole, Prakasam District, in CMA.No.21 of 2015, setting aside the Order and Decree dated 19.01.2015, passed by the Court of the Additional Senior Civil Judge, Ongole in I.A.No.1644 of 2014.

2. The facts and circumstances, in nutshell, leading to the filing of the present revision are as *infra*:

2.1. The respondent herein instituted OS.No.774 of 2014 against the petitioners herein for permanent injunction. The plaint schedule property is an extent of Acs.7-95 cents out of Acs.8.50 cents situated in Sy.No.176/1 of Doddavaram Village, Maddipadu Mandal, Prakasam District. Along with the said suit, the plaintiff/respondent herein filed I.A.No.1644 of 2014 under Order 39 Rules 1 and 2 read with Sections 94-E and 151 of the Code of Civil Procedure, praying for temporary injunction. Resisting the said application, defendants/petitioners herein filed counter.

2.2. The learned Additional Senior Civil Judge, by way of an order dated 19.01.2015, dismissed the said I.A.No.1644 of 2014.

2.3. Assailing the said order, the plaintiff/respondent preferred CMA.No.21 of 2015 and the learned First Additional District Judge, Ongole, by virtue of the Judgment and Decree dated 15.12.2015, allowed the said CMA thereby setting aside the order passed by the Trial Court in I.A.No.1644 of 2014.

3. Assailing the validity and the legal sustainability of the said order and decree passed by the learned First Additional District Judge, Ongole, the present revision has been filed.

4. Heard Sri M.Subba Reddy, learned counsel for the petitioners and Sri Mahadeva Kanthrigala, counsel for the respondent herein apart from

perusing the material available before the Court.

5. It is contended by the learned counsel for the petitioners that the order passed by the learned First Additional District Judge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 39 Rules 1 and 2 of the Code of Civil procedure; that the appellate Court did not consider the material available on record from proper perspective; that the appellate Court failed to assign valid and convincing reasons for disturbing the well-considered order of the trial Court; that the appellate Court failed to consider the statutory presumption as stipulated under Section 6 of the A.P. Record of Rights in Land and Pattedar Passbooks Act, 1971; that the reasons assigned by the appellate Judge are unsustainable and untenable in the eye of law; that the plaintiff/respondent herein failed to produce any evidence to show her possession over the suit schedule property.

6. Per contra, it is vehemently contended by the learned counsel for the plaintiff/respondent herein that there is no illegality nor there is any material infirmity in the impugned order, as such, the present revision is not maintainable and the petitioners are not entitled for any indulgence of this Court under Article 227 of the Constitution of India.

7. It is further submitted that since the respondent/plaintiff, by adducing cogent and convincing evidence, established her possession over the schedule property, the order impugned is not amenable for any interference of this Court and in view of dismissal of I.A.No.416 of 2013 in O.S.No.240 of 2013 filed by the defendants 2 to 4, petitioners are not entitled for any indulgence of this Court.

8. In the above backdrop, now the issues that emerge for consideration of this Court in the present revision are:

1. Whether the order passed by the learned Additional District Judge is in accordance with the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure?
2. Whether the impugned order warrants any interference of

this Court under Article 227 of the Constitution of India?

9. The material available before this Court vividly discloses that in order to substantiate her case, plaintiff/respondent herein filed Exs.A.1 to A.7, whereas the defendants filed Exs.B.1 to B.11.

10. The case of the plaintiff herein is that her father, late Sri Chalichama Chalapathi Rao purchased the schedule property in the year 1958 from one Mr.PVRGK Chowdary and obtained Exs.A.1 and A.2 sale agreements with possession executed in the year 1977 and he continued to be in possession during his life time and after his death in the year 1990, the plaintiff/respondent herein and her two brothers viz., Sambashiva Rao and Srinivasa Rao have succeeded to the plaint schedule property. It is the further case of the plaintiff/respondent herein that as her brothers were paying meagre amounts towards her share, she instituted O.S.No.287 of 2011 on the file of the Court of the Principal Senior Civil Judge, Ongole, against her brothers for partition and separate possession of 1/3rd share in the schedule properties and Item No.2 of the schedule to O.S.No.287 of 2011 is the petition schedule property in the present I.A.No.1644 of 2014 in O.S.No.774 of 2014, on the file of the First Additional Senior Civil Judge, Ongole. It is the further case of the plaintiff/respondent herein that she is in joint and constructive possession of the schedule property along with her brothers and a preliminary decree was passed on 09.07.2012 in O.S.No.287 of 2011 and the plaintiff/respondent herein filed I.A.No.446 of 2013 for passing final decree and the Commissioner appointed in the said I.A., also filed a report. It is further averred that the plaintiff's junior paternal uncle viz., Chalichimala Rambabu sold Acres.2-12 cents in favour of the fifth defendant and Acs.2-13 to the first defendant without any title and it is further alleged that the defendants/petitioners herein are proclaiming that they would occupy the schedule property.

11. Stating and alleging in the manner indicated supra, the respondent/plaintiff filed the present I.A.No.1644 of 2014 for temporary injunction.

12. In order to substantiate her case, the plaintiff/respondent herein filed Exs.A.1 to A.7. In the counter filed by the first defendant, which is adopted by the defendants 2 to 4, it is pleaded that the first defendant filed O.S.No.464 of 2012 and the First Additional Junior Civil Judge, decreed the said suit and granted permanent injunction against the plaintiff/respondent herein and her brothers. It is the further case of the defendant that the decree in O.S.No.287 of 2011 is a collusive decree and I.A.No.627 and 629 of 2014 filed by the defendants/petitioners herein under Order 1 Rule 10 in the final decree proceedings in O.S.No.287 of 2011 are pending and it is the further case of the defendants that they are *bona fide* purchasers from the cousins of the plaintiff, who received part of compensation from the Government also under the Land Acquisition Act. In order to substantiate their stand, defendants filed Exs.B.1 to B.11.

13. A perusal of the order passed by the learned Trial Judge in I.A.No.1644 of 2014 demonstrates, in clear and unequivocal terms, that the Trial Court, on through and meticulous consideration of the documents filed not only by the plaintiff, but also by the defendants, arrived at a conclusion that the plaintiff/respondent herein failed to prove the necessary ingredients of Order 39 Rules 1 and 2 and rejected the injunction application filed by the plaintiff. It would also be evident from a reading of the said order passed by the trial Court that the Trial Judge recorded a categorical finding that in view of the pendency of other civil litigation between the parties and in view of the documentary evidence let in by the defendants, the plaintiff is not entitled for the equitable and discretionary relief of injunction. The Trial Court also took into consideration the settled and well established proposition of law that the equitable and discretionary relief of temporary injunction needs to be granted only for maintaining *status quo* and with a view to protect the interests of the parties pending disposal of the suit. The trial Court also found that the decree in O.S.No.287 of 2011 *ipso facto* would not prove the possession of the plaintiff and the trial Court also took into account the statutory presumption of possession as stipulated under Section 6 of

the A.P. Record of Rights in Land and Pattedar Passbooks Act, 1971 and also filing of applications by the petitioners herein under Order 1 Rule 10 in the final decree proceedings in O.S.No.287 of 2011 and the pendency of the same for counter. It is also clear from the trial Court order that it took into consideration the registered sale deeds in favour of the defendants and the entries in the revenue records. The trial Court eventually found the absence of the ingredients of balance of convenience and the irreparable loss in the case of the plaintiff and rejected the relief of injunction.

14. The plaintiff/respondents herein assailed the said order of the trial Court by way of filing CMA.No.21 of 2015 before the learned First Additional District Judge, Ongole under Order 43 of the Code of Civil Procedure. The learned Additional District Judge framed the following two points for consideration:

1. Whether the petition filed by the appellant/petitioner/plaintiff under Order 39 Rule 1 of C.P.C for grant of temporary injunction is maintainable?
2. To what relief the appellant/petitioner/plaintiff is entitled?

15. The learned District Judge, by virtue of the order under challenge, allowed the appeal and reversed the order passed by the trial Court.

16. A reading of the order under challenge manifestly shows that the learned Additional District Judge took into account only Exs.A.1 to A.4 documents filed by the plaintiff and discarded and brushed aside completely the documents filed by the defendants without properly appreciating the relevancy and evidentiary value of the same for consideration of the injunction application. It is also very much obvious that the learned District Judge also made observations beyond the scope of the appeal, obviously touching the merits of the main suit and the validity of the documents filed by the defendants. The appellate Judge lost sight of the contents and entries in Exs.B.6 to B.9. It would also be manifest from the order impugned that the learned District Judge did not

undertake proper exercise to find out as to whether the plaintiff/respondent herein proved the existence of necessary and indispensable ingredients of Order 39 Rules 1 and 2. In the absence of all these aspects, this Court does not find any justification on the part of the appellate Judge in meddling with the well-considered and well-reasoned order passed by the learned Trial Judge. It is required to be noted at this juncture that the primary purpose of granting interim relief under Order 39 is to evolve a workable formula by keeping in mind the pros and cons of the matter and by striking a balance between the conflicting interests viz., injury and prejudice likely to be suffered by the plaintiff in the event of refusal of relief and the injury and prejudice likely to be experienced by the defendants in the event of granting relief.

17. It is settled and well established proposition of law that as a matter of course, a person is not entitled for the relief of injunction on the discretion of the Court and the same shall be exercised in favour of the plaintiff only if in the event of denial of the same the plaintiff would suffer irreparable loss and damage and such relief of injunction can be granted only in order to meet the ends of justice. In the instant case, it cannot be said by any stretch of imagination that in the event of refusal to grant injunction, the plaintiff respondent herein would be put to irreparable loss.

18. Having regard to material available on record, this Court is of the considered opinion that the balance of convenience is undoubtedly in favour of the petitioners herein and this Court is in total agreement with the well reasoned order passed by the trial Court. In view of the above reasons, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the order impugned cannot be sustained in the eye of law and is liable to be set aside.

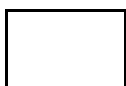
19. In the result, the revision is allowed, setting aside the order dated 15.12.2015, passed in CMA.No.21 of 2015, by the First Additional District Judge, Ongole, Prakasam District. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be

no order as to costs.

A.V.SESHA SAI, J

Date:04.04.2016

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

C.R.P.No.429 of 2016

Dated: 4th April, 2016

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