

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL REVISION PETITION No.2773 of 2016

ORDER:

This civil revision petition is filed against the proceedings No.A/363/2016 dated 20.05.2016 issued in Agency Suit No.363 of 2016 on the file of the Agency Divisional Officer-cum-Agent to Government, Adilabad, by and under which, the learned Revenue Divisional Officer, Adilabad granted temporary injunction against the petitioners herein in respect of the property of an extent of Ac.28.34 gts in Sy.No.19 of Gudihathnoor village and mandal.

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

The petitioners are the defendants and the respondent is the plaintiff in Agency Suit No.363 of 2016. The plaintiff filed the said suit against the defendants seeking perpetual injunction stating that she is the absolute owner and possessor of an extent of Ac.28.34 gts situated in Sy.No.19 of Gudihatnoor of Adilabad District. The defendants are her western side owners and they are having property in Sy.No.20. It is stated that the defendants are trying to encroach upon the property of the plaintiff, for which, the plaintiff made an application to the Tahsildar Gudihatnur for demarcation of boundaries and measurements of the land in Sy.No.19. After following the procedure and after issuing notice to both parties, on 23.04.2016 a panchanama was conducted by the Mandal Surveyor and he demarcated the boundaries of the respective properties. After the said survey, on 01.05.2016 the plaintiff took steps to erect a barbered fencing around her fields towards western side, then the defendants interfered and objected. Therefore, the plaintiff filed the above suit.

The Agency Court i.e., the Revenue Divisional Officer,

Adilabad, after hearing the plaintiff and considering the documents filed by the plaintiff and taking into consideration the panchanama conducted on 23.04.2016 by the Mandal Surveyor, Gudihatnoor for demarcation of Sy.Nos.19 and 20, granted interim injunction in favour of the plaintiff restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over her property of an extent of Ac.28.34 gts in Sy.No.19, vide proceedings dated 20.05.2016.

Questioning the said proceedings, the defendants filed the present revision petition, contending that in their absence the alleged survey was conducted and no notice was given by the Court below and without hearing them, the court below erroneously passed the interim order which is liable to be vacated. The further contention of the defendants is that the Court below has no jurisdiction to entertain the suit, and further the suit filed by the plaintiff under Rule-3 of Andhra Pradesh Scheduled Area Land Transfer Regulation and Rules, 1969 is not maintainable as the plaintiff and the defendants are not the Scheduled Tribes as required under Regulation 4 of A.P.Schedule Area Land Transfer Regulation, 1959.

The point for consideration is as to whether the interim injunction granted by the Revenue Divisional Officer and Agency Divisional Officer at Adilabad can be sustained or it needs to be modified or set aside?

The admitted facts outweigh the point in controversy. The admitted case is that the respondent herein, who is the plaintiff, has filed the suit for injunction simplicitor claiming that he is the owner and possessor of the land admeasuring Ac.28.35 guntas in Sy.No.19 whereas the revision petitioners/defendants are having their own land admeasuring about Ac.5-00 in Sy.No.20. Both the lands are adjacent to each other and the lands of the defendants are towards the western side of the land of the plaintiff. Both the parties had been enjoying

their respective lands. Since there was an apprehension that the land is being encroached by the other side, a survey was conducted by the authorities and a panchanama was conducted determining the boundaries of the respective lands in Sy.Nos.19 and 20. Towards western side of the land of the plaintiff, there is a bore-well. Even though the averments of the plaintiff insofar as the bore-well is concerned are vague but ultimately it emerges that it is the defendants who dug the bore-well in their own land. The dispute arose when the plaintiff was erecting barbed wire fencing towards the western side in between the lands in Sy.Nos.19 and 20. It is alleged that in that process the plaintiff made an attempt to encroach upon the land of the defendants including the bore-well and hence there ensued a quarrel and dispute between the parties.

The Revenue Divisional Officer and the Agency Divisional Officer has passed the impugned order on 20.05.2016 restraining the petitioners/defendants from interfering with the possession of the respondent/plaintiff till further orders and also directed the petitioners/defendants not to interfere with the fencing work by the plaintiff in between Sy.Nos.19 and 20.

It is evident from the order that the said order has been passed even without notice to the petitioners/defendants. Instead of granting injunction, if at all satisfied till the appearance of the petitioners/defendants and filing the counter. The learned authority has erroneously granted injunction until further orders. Thereby, denying an opportunity to the petitioners/defendants to make their appearance and put forth their case before granting or refusing the relief of injunction. This conduct of the authority below is questioned by the petitioners/defendants in the revision.

It is not denied that the impugned Order granting injunction until further orders is without notice to the petitioners/defendants. The

learned Counsel appearing for the respondent/plaintiff submits that there is a remedy available to the revision petitioners/defendants to go to the Court below and seek the relief of vacating the interim injunction orders. There is no force in his submission for the reason that when the injunction has been granted until further orders, which implies that the orders will be in force till the disposal of the suit, the petitioners need not necessarily go to the same authority and file an application to vacate the injunction orders. If the order passed by the authority is shown to be illegal, irregular or perverse, the same can be challenged by way of revision.

Adverting to the above facts of the case, there is absolutely no dispute whatsoever that both the plaintiff and the defendants are neighbouring landholders and they had been enjoying their respective lands but the dispute is only with regard to the land towards west of the plaintiff. What appears to be the bone of contention is the existence of bore-well on the western side of the land of the plaintiff. In the process of erecting fencing around the land, the plaintiff is allegedly trying to take within its fold the bore-well which admittedly was dug by the revision petitioners/defendants in their own land which according to the plaintiff was illegally dug. Under the guise of injunction orders, the respondent is trying to erect the fencing contrary to what has been demarcated in the panchanama.

Having considered the above facts and circumstances and also the material on record, it is just and proper to direct that the respondent/plaintiff can erect the fencing on three sides of his land but towards western side i.e., in between the land of the plaintiff and the defendants, there should be no fencing till the authority passes final orders in the suit filed by the respondent/plaintiff. Both the parties are entitled to possess and enjoy their respective lands without encroaching upon the neighbouring land as the boundaries have already been fixed by the competent authority.

In that view of the matter, pending disposal of the suit, both the parties are directed to maintain *status quo* insofar as the western side land of the plaintiff i.e., abutting the land of the defendants is concerned. The learned Revenue Divisional Officer and Agency Divisional Officer, Adilabad, is directed to dispose of the main suit within a period of six months from the date of receipt of a copy of this order after affording opportunity to both the parties to put forth their evidence and submissions.

In the result, the Civil Revision Petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

August, 2016

Dsr/smr