

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

CIVIL REVISION PETITION No.3203 of 2016

ORDER:

This civil revision petition is filed against the order dated 02.06.2016 in C.M.A.No.1/2013 on the file of the Principal Senior Civil Judge, Mancherial, Adilabad District, by and under which, the learned Judge dismissed the CMA filed by the petitioners herein while confirming the order of the learned trial Court dated 24.01.2013 passed in I.A.No.732/2012 in O.S.No.340/2012, whereunder the petition filed by the petitioners under Order 39, Rules 1 & 2 CPC was dismissed.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents/defendants.

3. The petitioners are plaintiffs Nos.1, 2 & 5 in O.S.No.340/2012 on the file of the Principal Junior Civil Judge, Mancherial, Adilabad District. The said suit was filed for perpetual injunction against the respondents/defendants from interfering with the affairs and management of the plaintiffs over the disputed temple. Along with the suit, the plaintiffs filed I.A.No.732/2012 under Order 39 Rules 1 & 2 CPC seeking temporary injunction restraining the respondents and their agents etc., from interfering with the affairs and managements of the petition schedule temple, known as "Gadapa Usha Rajanna Shiridi Sai Baba Temple" situated in an extent of Ac.0.10 gts together with adjacent open land with well and house towards northern side, intercepted by a common lane in Sy.No.92 of Mancherial village, within specific boundaries.

4. The case of the petitioners is that the father of the 1st petitioner by name Gadapa Ellaiah acquired properties, which were merged with the joint family, consisting of Gadapa Ellaiah, his father Rajana, brothers Ramaswamy, Pochaiah, Narender, Anjaiah, Nagesh, Srihari and sisters Kanakamma and Balamma @ Anuradha. Gadapa

Rajanna died on 10.03.1988, his wife Smt.Usha Devi pre-deceased him on 01.01.1988. Gadapa Ellaiah, the father of the 1st petitioner, constructed the disputed temple in memory of his parents Rajanna & Usha Devi and the said temple was inaugurated on 30.08.1990. After death of his parents, Gadapa Ellaiah was looking after the affairs of the subject temple. It is further case of the plaintiffs that after the death of parents of Gadapa Ellaiah, an oral partition took place on 09.08.1992 between Gadapa Ellaiah, Ramaswamy, father of the 8th respondent, Pochaiah, father of respondents Nos.6 & 7 and the respondents 1 to 5 and the same was reduced into writing on 16.08.1992. As per the said partition, it was decided that the Gadapa Ellaiah should look after and manage the affairs of the disputed temple. Accordingly, Gadapa Ellaiah was looking after the affairs of the dispute temple and he opened a bank account with the State Bank of Hyderabad, Mancherial in the name of the Temple, and he used to deposit the day to day income from the worshippers in the said account. The said Gadapa Ellaiah died on 04.07.2012 leaving the petitioners as his legal heirs. During his lifetime, Gapada Ellaiah executed a Will on 12.05.2012 bequeathing the management of the dispute temple in favour of the 1st petitioner. In spite of that, on 11.08.2012 the respondents/defendants along with others tried to break open the locks of the Hundies and to interfere with the management of the 1st petitioner over the disputed temple and hence the petitioners/plaintiffs filed the suit as well as the interlocutory application.

5. The respondents/defendants filed counters denying the averments of the affidavit filed in support of the petition. It is contended that the properties are joint family properties. Gadapa Rajanna purchased the land in Sy.No.92 under a registered sale deed dated 25.09.1964. In the partition effected on 16.08.1992, Gadapa Ellaiah, the father of the 1st plaintiff was authorized to maintain the disputed temple along with other properties. After death of Gadapa Ellaiah, all

the legal heirs including the plaintiffs passed a resolution on 04.08.2012, under which, the 4th respondent was authorized to look after the affairs of the disputed temple. All the family members except the plaintiffs have signed on the resolution. Gadapa Ellaiah has no exclusive right over the disputed temple.

6. It is contended by the 5th respondent that he filed O.S.No.60 of 2006 on the file of the Senior Civil Judge, Asifabad for partition and separate possession of the suit schedule property therein and the same was transferred to the Court below and re-numbered as O.S.No.336/2009. It is contended that Gadapa Ellaiah and other respondents are co-owners and co-sharers of the land where the disputed temple is situated. As the disputed temple is a joint family property, no injunction can be granted in favour of the petitioners and against the respondents.

7. Though all the plaintiffs filed CMA against the orders of the trial Court, plaintiffs Nos.3 & 4 have withdrawn their claim before the Court below in CMA.No.1/2013. Plaintiffs Nos.1, 2 & 5 only have filed the present civil revision petition.

8. Before the trial court, on behalf of the plaintiffs Exs.P1 to P133 are marked, whereas Exs.R1 to R34 are marked on behalf of respondents/defendants. No oral evidence was let in on either side.

9. Both the Courts below on going through the entire record and documentary evidence adduced on either side, dismissed the interlocutory application filed by the petitioners/plaintiffs, observing that there is no *prima facie* case and balance of convenience in favour of the petitioners/plaintiffs to grant temporary injunction in their favour. Both Courts below further observed that since the suit temple is joint family property, no injunction can be granted against the respondents/defendants. Aggrieved by the said decision, the present revision is filed.

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10. The point for consideration is as to whether the Judgment of

the trial Court as well as the appellate Court refusing to grant interim injunction pending disposal of the suit in favour of the petitioners/plaintiffs warrants any interference and whether it suffers from perversity or arbitrariness amounting to failure to exercise the jurisdiction?

11. The parties to the litigation are all agnates emanating from the common ancestor Gadapa Rajanna and his wife Usha Devi. The couple died in the year 1988 within a span of about three months in between. They not only left behind a large family comprising of seven sons and two daughters but also vast extents of properties including the Sai Baba temple which is the subject matter of the present litigation. While the petitioners/plaintiffs belong to the branch of Ellaiah, the other respondents are the legal heirs of Gadapa Rajanna representing other branches. During life time of Gadapa Rajanna, it appears that the properties are partitioned and it is not disputed that the temple and two other properties were not divided and they were left to be enjoyed by the family even though the management thereof was entrusted to Ellaiah, who was the then elder surviving son of Rajanna. Gadapa Ellaiah whose legal heirs are the petitioners has managed the temple from 1990 to 04.07.2012 and on the said date, Gadapa Ellaiah died in an accident. Within a month thereafter, according to the respondents, all the family members decided that the management of the suit temple be entrusted to the sixth respondent herein, who is the son of late Pochaiah, the elder brother of Ellaiah, and a document to that effect was reduced into writing on 04.08.2012. All the members of the family representing other branches signed the said document but the petitioners representing the branch of Ellaiah did not sign thereon. According to the respondents, the 6th respondent on behalf of the family is looking after the temple ever since then.

12. The contention of the petitioners on the other hand is that their father Ellaiah in the month of May, 2012 executed a will deed bequeathing the management of the temple to the 1st petitioner and

within less than two months thereafter, Ellaiah died in an accident. According to the petitioners, in pursuance to that will, the petitioners took over the management of the temple but on 11.08.2012, the respondents have high-handedly trespassed into the temple, caused damage and interfered with the possession of the petitioners over the affairs of the temple.

13. What could be gathered from the voluminous material on record is that neither of the parties are claiming any exclusive title over the temple. They are all in agreement that the temple was to be the joint family property and was to be managed by the family and due to the sudden death of Gadapa Ellaiah, who was entrusted with the management of the temple, the controversy arose as to who should look after the management of the temple. There is no dispute about the aspect that the petitioners and the respondents are agnates and co-owners of the suit schedule property. With regard to the several other properties, even during the life time of Gadapa Ellaiah, a suit for partition has been filed, which is O.S.No.337 of 2009 (old O.S.No.60 of 2006) on the file of the Principal Senior Civil Judge, Mancherial. The relevant pleadings in that suit, as propounded by Gadapa Ellaiah during his life time, is that he is the custodian of the temple and that he is managing the same as a trustee. After the death of Gadapa Ellaiah, in view of the incident which is said to have taken place on 11.08.2012, the present suit came to be filed. Pending disposal of the suit, the petitioners filed I.A.No.732 of 2012 for interim injunction and after comprehensive enquiry, the trial Court dismissed the same holding that the petitioners are not entitled to the relief of injunction. The petitioners were unsuccessful in an appeal filed by them before the Principal Senior Civil Judge, Mancherial, bearing C.M.A.No.1 of 2013.

14. At the outset, learned Counsel appearing for the respondents submits that the trial Court as well as the appellate Court has delivered a well-considered finding that the petitioners are not entitled for

injunction pending disposal of the suit. Both the Courts below have taken into consideration the voluminous documentary evidence comprising of Exs.P.1 to P.133 and Exs.R.1 to R.34 and the pleadings of the parties. The findings, according to the learned Counsel appearing for the respondents, are based on the material on record and by no stretch of imagination, can it be said that the said findings are either perverse, arbitrary or failure to exercise the jurisdiction vested in the Courts below. Learned Counsel submits that when the two Courts refused to grant injunction pending disposal of the suit, the High Court should not generally interfere with the said findings unless it is shown to be perverse or illegal. In support of his contention, learned Counsel appearing for the respondents relied upon the decisions of the Supreme Court reported in **THE MUNICIPAL CORPORATION OF DELHI v. SURESH CHANDRA JAIPURIA AND ANOTHER (AIR 1976 S.C., 2621)**; and **ECE INDUSTRIES LIMITED v. S.P.REAL ESTATE DEVELOPERS PRIVATE LIMITED AND ANOTHER (2009) 12 SCC 776**. It is held by the Apex Court in the latter decision in pars 14 and 31 as under:-

“It is well settled now by a catena of decisions of this Court that when two Courts concurrently rejected the application for injunction, it would not be open for the third Court to interfere with the said concurrent findings until and unless it is brought to the notice of the third Court that such findings are perverse or arbitrary.”

That apart, in our view, when the High Court as well as the trial Court had refused to grant injunction in favour of the appellant-plaintiff based on a consideration of the materials on record and after considering the balance of convenience and inconvenience of the parties and when such findings of the High Court as well as of the trial Court do not suffer from any perversity or arbitrariness, it is not open for this Court to interfere with such order of the High Court as well as of the trial Court.”

15. Learned Counsel appearing for the petitioners submits that both the Courts below have entered into a controversy on an

erroneous presumption that the petitioners cannot sustain their suit for injunction simplicitor without asking for declaration of title. Learned Counsel submits that absolutely there is no controversy so far as the title over the suit temple is concerned and only the management thereof is in controversy. Therefore, there is no need whatsoever for the petitioners to have sought for the relief of declaration of their title over the suit schedule temple.

16. Upon careful perusal of both the Judgments of the Courts below and the submissions of the learned Counsel, what is required to be seen is as to whether the concurrent findings of fact needs to be interfered with in this revision petition on the ground that it suffers from any perversity, arbitrariness or illegality.

17. Since Gadapa Rajanna and Usha Devi were said to be the devotees of Shirdi Sai Baba and were possessed of vast extents of properties, the temple was constructed by the family and even though the other properties are said to have been partitioned, the temple as such was not touched and is specifically mentioned at the said partition that the temple shall be the property of the joint family and its management will be looked after by Gadapa Ellaiah who was by then the eldest surviving son of the couple. When the petitioners claim to have come in possession of the temple by virtue of a will said to have been executed by Ellaiah in the month of May, 2012, whereas Gadapa Ellaiah died in an accident on 04.07.2012. When the property is left to be joint without conferring any right on any of the coparceners and only management thereof is entrusted to one of the heirs, such a person cannot bequeath the right of management to his children. It is for the family to decide as to who should be in the management of the temple which was agreed to be the joint family property of the family. Even if the contentious will – Ex.P.5 propounded by the petitioners is taken into consideration, the same cannot be treated as conferring any exclusive possessory rights over the temple in favour of the petitioners de hors the rights of the other members of the family to be in

management of the temple. In view of the sudden and untimely death of Ellaiah, who appears to be peacefully and prosperously managing the temple for about 12 years prior to his death, it is for all the legal heirs of Rajanna to decide as to who should be in the management of the temple. Admittedly, the temple was not left to be exclusively enjoyed or managed by Gadapa Ellaiah so as to presume that after his death, his legal heirs alone can manage the affairs of the temple or the said Gadapa Ellaiah had any testamentary rights over the property, management of which only was entrusted to him by virtue of he being the eldest surviving son.

18. Therefore, the respondents submit that after the untimely death of Ellaiah in an accident on 04.07.2012, a meeting was held on 04.08.2012, in which it was resolved by all the family members that the management of the temple should be made over to the 6th respondent. According to the respondents, it is the 6th respondent who is managing the affairs of the temple ever since then. There is no question of there being any interference, trespass or any high-handed acts on the part of the respondents in causing any damage to the temple or its properties. According to the respondents, all these are created and since the petitioners themselves are not entitled to claim any exclusive possession thereof, they cannot say that they are entitled to an injunction restraining other members of the family from interfering with their possession.

19. As is well settled proposition of law that for grant of injunction pending disposal of the suit, the trinity factors need to be proved by the petitioners. None of the documents are produced by them to show that on the date when the suit was filed, it is the petitioners who were in exclusive possession or enjoyment of the temple. It may be recalled here that Gadapa Ellaiah, the ancestor of the petitioners, himself in his pleadings in the previous suit has categorically asserted that he is only the custodian of the temple and he is managing the same as a trustee thereof. After the death of

Ellaiah, his children cannot say that it is they alone who are entitled to manage the affairs of the temple. The petitioners have not produced any satisfactory evidence to show that after the death of Ellaiah, the management of the temple, the ownership of which vests in the entire joint family, was handed over to the petitioners for the purpose of its day-to-day management.

20. Both the Courts below have elaborately discussed the material on record and the submissions and came to the conclusion that the petitioners are not entitled to the injunction pending disposal of the suit. The said findings are based on well established principles of law as well as facts and they cannot be said to be in any way perverse, arbitrary or illegal so as to interfere therewith in this revision under Article 227 of the Constitution of India. The scope and power of the Court under Article 227 of the Constitution of India is well settled by the catena of authorities and considering the same, recently a learned single Judge of our High Court in a decision reported in **SARALA JAIN v. SANGU GANGADHAR (2016 (3) ALT 132)** observed as under in para 10:-

“The power of revision under Article 227 of the Constitution of India is supervisory in nature and this Court can interfere with the orders passed by subordinate Courts or Tribunals only when subordinate Courts or Tribunals failed to exercise jurisdiction or where exceeded their jurisdiction or exercised jurisdiction illegally or irregularly conferred on them. Time and again scope of Article 227 of the Constitution of India came up for consideration before the Apex Court and the Apex Court laid down certain principles. It is well settled that High Court can exercise supervisory jurisdiction under Article 227 of the Constitution of India to keep subordinate Courts or Tribunals within the boundaries of their jurisdiction. The Apex Court, in *State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and others (2003) 6 SCC 641*, examined the power of High Court to interfere with orders of subordinate Courts or Tribunals in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

In the light of the law laid down by the Apex Court, it is abundantly clear that this Court can exercise only its jurisdiction in exceptional circumstances which is supervisory in nature. Therefore, if the Court finds that there is an illegal exercise of jurisdiction by the trial Court, this Court can interfere with the order under challenge otherwise this Court cannot exercise power though the order is wrong.”

21. The result of the foregoing discussion is that both the Courts below have considered the material on record in proper perspective and held that the petitioners are not entitled to injunction pending disposal of the suit.

22. The contentious issues if any need to be adverted after full fledged trial. Needless to say that since the dispute is with regard to a temple, which belongs to joint family, whoever is in management thereof should maintain its accounts in a proper way which can be scrutinized and verified by any other members of family who have equal rights over it.

23. In the result, the Civil Revision Petition is dismissed confirming the orders of the Principal Junior Civil Judge, Mancherial, in I.A.No.732 of 2012, as confirmed by the appellate Court in C.M.A.No.1 of 2013. Since the suit is of the year 2012, the Principal Junior Civil Judge, Mancherial, is directed to make every endeavour to dispose of the suit expeditiously, preferably within a period of six months, from the date of receipt of the order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 17th Augst, 2016

Dsr/Smr