

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.5330 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/plaintiff, assailing the order dated 04.11.2015 of the learned Special Assistant Agent – cum – Sub Divisional Magistrate, Mobile Court, Bhadrachalam, passed in I.A.No.15 of 2015 in O.S.No.16 of 2015 filed for grant of temporary injunction to restrain the respondents/defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of Ac.2.00 guntas of land in survey number 17/50 situated at Laxmidevipalli village, Kothagudem Mandal of Khammam District.

2. I have heard the submissions of Sri K.Sarath, the learned counsel for the revision petitioner/plaintiff ('plaintiff', for brevity) and Sri Krishna Kishore Kovvuri, the learned counsel for the respondents/defendants ('defendants' for brevity). I have perused the material record.

3. The case of the revision petitioner/plaintiff, in brief, is this: 'He is the owner and possessor of the plaint schedule property. Originally, the plaint schedule property belonged to one Shaik Mahaboob Bee, W/o. Shaik Gouse Mohinuddin. He purchased the said land from her under a registered sale deed. From that day onwards, he is enjoying the plaint schedule property without any interruption from any person. When the defendants/respondents came to the plaint schedule

property on 16.01.2015 and tried to interfere with his peaceful possession and enjoyment over the plaint schedule property, he could resist their attempts at interference with the timely intervention by him and his men. However, while leaving the property, the respondents/defendants and their men proclaimed that they would come again with more men and occupy the plaint schedule property. Hence, he is constrained to file the suit as well as the interlocutory application for temporary injunction.'

4. *Per contra*, the case of the respondents/defendants is this: 'The material allegations in the petitioner's affidavit are false. The 4th defendant's wife – Saidabee purchased the schedule land from one Shaik Mehaboob Bee, W/o. late Shaik Gouse Mohinuddin in the year 2007 under a sale deed. The said vendor handed over possession of the land along with the records to the wife of the 4th defendant and since then, the wife of the 4th defendant is in exclusive possession and enjoyment of the property as the owner thereof. The wife of the 4th defendant sold away Ac.1.20 guntas out of the total extent of Ac.2.00 guntas of land to Smt.Kanchu Nagamani, W/o. Ilaiah and Smt.Tallapalli Rajamani, W/o. Raju in the year 2011 under registered sale deeds. The remaining 50 guntas of land is in possession of the wife of the 4th defendant. In the year 2011, the wife of the 4th defendant obtained permission from the Gram Panchayat, Laxmidevipalli, for construction of a house in the remaining property. She also made construction upto the level of basement. Later the 4th defendant met with an accident and was hospitalised for two months; and hence, construction

could not be completed. This fact is known to the people of the colony. As the 4th defendant made some marginal profit by selling a part of the property, said Mahaboob Bee and her sons are having a greedy eye and colluded with the plaintiff and created false documents for getting wrongful gain and got filed the present petition through the petitioner/plaintiff. Hence the petition may be dismissed.'

5. At the hearing before the learned Sub Divisional Magistrate, Mobile Court, Bhadrachalam, no oral and documentary evidence was adduced. However, the said Sub Divisional Magistrate, Mobile Court at Bhadrachalam, having considered the pleadings and documents on record, dismissed the application of the plaintiff. Therefore, the plaintiff is before this Court.

6. At the hearing, the learned counsel for the revision petitioner/plaintiff would submit as follows: 'The plaintiff is a *bona fide* purchaser of the plaint schedule property for valuable consideration from its owner Shaik Mahaboob Bee, W/o. Shaik Gouse Mohinuddin. From the date of purchase, he is in possession and enjoyment of the property. The property is situated in scheduled area and the transaction is between a tribal and a non tribal. The petitioner/plaintiff, being tribal, his possession deserves to be protected, but the Court below erroneously dismissed the application for temporary injunction, though the documents viz., agreement, third party affidavits and copies of the Pahani Patrikas from the year 1999 onwards up to the year 2012 were filed. Therefore, this revision may be allowed and a temporary injunction may be granted as prayed for in

the interlocutory application in I.A. no. 15 of 2015 in O.S.No.16 of 2015.'

7. *Per contra*, the learned counsel for the respondents/defendants, while reiterating the case of the defendants, which is already stated *supra*, and while supporting the orders of the Court below, would submit as follows: 'The document relied by the plaintiff is not a sale deed and it is only a sale agreement and the transaction thereunder is in the nature of out and out sale deed. The Court below held that it is inadmissible for want of stamp duty and registration. The defendants obtained information having resorted to the provisions of the Right to Information Act. And on such information furnished, it was revealed from the register maintained by the stamp vendor that the stamp paper dated 09.01.2001 bearing No.621 on which the plaintiff's alleged agreement was drafted was never sold by the said stamp vendor on the said date. Therefore, the Court below, having considered the said aspect as well, held that the agreement is not a genuine one and that the plaintiff has no *prima facie* case and accordingly, dismissed the application for temporary injunction. Hence, the revision may be dismissed confirming the orders of the Mobile Court.'

8. I have given earnest and thoughtful consideration to the facts and submissions.

9. As narrated in the orders of the Court below, the plaintiff is claiming in the suit that he has purchased the plaint schedule property from one Shaik Mahaboob Bee, W/o. Shaik Gouse Mohinuddin under a

sale deed. In fact, the document filed by him reveals that it is only a sale agreement with the recitals that he purchased the property from Shaik Mahaboob Bee, W/o. Shaik Gouse Mohinuddin. It was only engrossed on a stamp paper worth Rs.50/-. It was neither registered nor sufficiently stamped. Further, it is being contended that the recitals therein disclose that the transaction embodied is an out and out sale. Be that as it may. The Court below, in the order impugned, observed that the stamp paper dated 09.01.2001 and bearing number 621 cannot be considered as genuine and that it is a doubtful non-judicial stamp paper, in view of the evidence produced by the defendants after obtaining necessary information from the Sub Registrar concerned after having resorted to the provisions of the Right to Information Act.

10. Further, from the pleadings of the defendants it is evident that the wife of the 4th defendant purchased the plaint schedule property from Shaik Mahaboob Bee, W/o. Shaik Gouse Mohinuddin and that out of the total extent of Ac.2.00 guntas, she sold Ac.1.20 guntas to Kanchu Nagamani and Tallapalli Rajamani in the year 2011 and that she had obtained construction permission from the Gram Panchayat for construction of a house in the remaining 50 guntas of land and that she even raised basement and later stopped the construction on account of her hospitalisation due to involvement in an accident. Therefore, the Court below disbelieved the claim of purchase made by the plaintiff and also the averments in the third party affidavits to the effect that the plaintiff is in possession and enjoyment of the plant

schedule property and eventually held that the plaintiff failed to establish a *prima facie* case, which is *sine qua non* for grant of temporary injunction and accordingly dismissed the application of the plaintiff. Having thus analysed the pleadings and contentions of the parties, this Court is of the view that the order impugned is justified in the facts and circumstances of the case and does not call for any interference.

11. In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

26th December, 2016
Bvv

M. Seetharama Murthi, J

