

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4338 of 2014

ORDER :

The revision petitioners herein are defendant Nos.4, 5 and 9 to 11, respondent No.1 is the plaintiff and respondent Nos.2 to 6 are the defendant Nos.1 to 3, 6 and 7 in O.S.No.85 of 2012 on the file of the Principal Junior Civil Judge, Jangeon, Warangal District. It is endorsed in this revision that respondent Nso.2 to 6 are not necessary parties. The plaintiff filed I.A.No.234 of 2012 in the suit seeking temporary injunction and that petition was allowed. It is impugning the order dated 05.06.2014 in I.A.No.234 of 2012 in O.S.No.85 of 2012 by the Principal Junior Civil Judge, Jangaon, the revision petitioners-defendant Nos.4, 5 and 9 to 11 supra maintained C.M.A.No.1 of 2014 on the file of the Senior Civil Judge, Jangaon and from the dismissal of the same on 07.10.2014 against the concurrent finding granted the temporary injunction in respect of the plaint schedule property of Ac.3.14 gts. of Sy.No.236 of Jalapally Village of Maddur Mandal (Tahasilr) in the main suit for bare injunction against the defendant Nos.4 to 11 and so far as defendant No.1 to 3, who are revenue officials, the plaintiff is seeking against them the relief of rectification of entries in the revenue records.

2. The total extent claimed is Ac.12.29 gts in Sy.Nos.54, 187, 189, 190, 192, 193, 194, 236, 256, 259 and 261 and it is claim that the original owner for said extents is one Malki Mallaiah and after his death, his three sons, viz., Yellaiah, Chinna Mallaiah and Venkaiah,

having succeeded, partitioned the properties during the years 1976-77 and were allotted Ac.4.09 gts. Ac.4.10 gts. And Ac.4.10 gts. respectively and their names were also claimed mutated in revenue records respectively and later the same were succeeded by the children of the respective three brothers.

3. It is therefrom the claim of the plaintiff that his ancestor got out of the same, Ac.4.10 gts. and also purchased Ac.3.14 gts. under Ex.P-1-registered sale deed from one among the other two branches. Thus, the source of title of the plaintiff is very clear. Now, it is the claim of the plaintiff from the above that, out of the property, he has given Ac.2.05 gts. to his 1st wife Laxmi during the year 1987-88 and also Ac.1.00 permitted to enjoy by her, further, Ac.1.13 gts. is given to one Kamamma, the second wife and no other than the mother of D.3, and remaining is claimed as plaint schedule.

4. It is the contention of the revision petitioners (D.4, D.5 and D.9 to D.11) that if the same even taken into consideration out of Ac.7.24 gts. (Ac.4.10+Ac.3.14), Ac.4.18 is covered by the above, there remained only Ac.2.06 gts. and the Courts below went wrong in ignoring the same and the concurrent findings granting temporary injunction are devoid of merits and liable to be set aside.

5. Heard both sides at length and perused the material on record.

6. The facts supra no more requires repetition on crux of the lis. In fact, Ac.1.00 is shown enjoyed by said Laxmi is not covered by any document and as such same is form part of the suit schedule property

or there is another extent, is a matter finally to be adjudicated. Thereby on that ground, this Court cannot sit in revision to reverse the concurrent findings of the Courts below when the plaintiff schedule property claimed of Ac.3.14 gts by explaining from the above, but for leave to the trial Court to decide after full dressed trial from evidence being placed on record and on merits.

7. In fact, what are the requirements to grant or refuse the temporary injunction is existence of prima facie case, balance of convenience and irreparable injury. When these three conditions are made out to mean, something more than existence of tribal issue and bonafide contention and not ultimate chance of success to make out prima facie, further in weighing on the scale the case of both to decide in whose favour to grant or refuse, the scale tilts is the balance of convenience to consider from the respective submissions propounded by the parties with reference to oral pleadings, documents relied, if any, and the third party affidavits supported, if any, and the irreparable injury need not always be not capable of being measured in terms of money, but infringing the right itself is enough and when once same is settled law from the concurrent findings of two Courts below in coming to the conclusion, for this Court while sitting in revision there is nothing to interfere even from the said lacuna pointed out, but for while continuing the existing status quo to maintain by both parties by virtue of the injunction order to give early disposal of the suit by the trial Court.

8. Having regard to the above, the revision is disposed of while directing for maintaining the existing status quo by both parties from the temporary injunction granted in favour of the plaintiff from the two Courts below, but for to say pursuant to the temporary injunction, the plaintiff shall not even alienate or middle with or alter the nature of the property till the disposal of the suit. None of the observations either of the trial Court or of the lower appellate Court in granting temporary injunction, much less of this Court supra, will no way influence the mind of the trial judge in deciding the suit on own merits. The trial Court shall take up the suit for disposal preferably within four months and if it is not practicable to dispose of the suit within four months from date of receipt of this order, time can be sought for extension.

9. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

1st November 2016.

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