

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.2123 of 2016

ORDER:

Aggrieved by the order dated 19.04.2016 in I.A.No.281 of 2014 in O.S.No.385 of 2014 passed by learned Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, Khammam District whereby the interim injunction earlier granted in favour of respondent/plaintiff was made absolute, the petitioners/defendants filed the instant Civil Revision Petition.

2) Heard arguments of Sri Krishna Kishore Kovvuru, learned counsel for petitioners and Sri S.Appadhara Reddy, learned counsel for respondent and with their consent this CRP is disposed of at the admission stage.

3) The respondent is the plaintiff and the revision petitioners are defendants in O.S.No.385 of 2014 and for convenience sake, they are so referred hereafter.

4a) The plaintiff filed O.S.No.385 of 2014 seeking perpetual injunction against the defendants. Her case is that her father—Viswanadham, 1st defendant—Krishnaiah and one Narayana are three sons of late Venkataramaiah. They got ancestral property of mango garden in an extent of Ac.4.00 gts. in Sy.No.25 and Ac.4.02 gts. of land in Sy.No.26 in one compact block. In a partition, the 1st defendant got Ac.4.00 in Sy.No.25 and plaintiff's father—Viswanadham got Ac.2.01 gts. in

Sy.No.26 and her uncle—Narayana got the remaining Ac.2.01 gts. of land. After partition, the Revenue Department assigned Sy.No.26/A to the land of Viswanadham and issued Pattadar pass book and title deeds. All the three brothers are enjoying their respective shares. They removed mango trees from their respective shares, as they could not get sufficient income and started raising Maize and banana crops. The father of plaintiff used to obtain crop loans from the Cooperative Society, Dammapeta for raising crops.

b) The further case of the plaintiff is that her father gave the property in an extent of Ac.2.01 gts. in her favour about two years prior to the suit under an oral family arrangement and ever since the plaintiff has been in possession and enjoyment of the suit land. Her name was mutated in the relevant records and Pattadar pass book and title deeds were issued. She has been raising Maize crop in the suit land. Whenever monsoon failed, she used to get water from the bore-well of 1st defendant by paying rent of Rs.2,000/- per each season of the crop as Bilmukha. However, of late in the suit season, the 1st defendant demanded the plaintiff to pay the water charges at the rate of Rs.4,000/- for season and as she could not afford to pay that amount, she preferred to take the water at the old rate of Rs.2,000/- from the eastern neighbour—Manne Narayana Rao which caused eyesore for the defendants. They bore grudge against her and tried to interfere with her cultivation of the suit land and thus tried to interfere with her peaceful possession and enjoyment of the suit land.

Hence the suit and also interim injunction petition—I.A.No.281 of 2014 at the instance of plaintiff.

c) The defendants filed counter in I.A.No.281 of 2014 and opposed the suit denying the material averments in the petition. Their case is that plaintiff's father—Viswanadham exchanged his share of the land with the house site in Sy.No.131 of Mandapally village in an extent of Ac.0.04 gts. belonging to 1st defendant and due to the said exchange the defendants became owners of Ac.6.01 gts. i.e. Ac.4.00 in Sy.No.25 and Ac.2.01 gts. in Sy.No.26/A and they have been enjoying the entire property without let or hindrance and raising crops. Since the market value of the land is increased, the plaintiff and her father hatched a plan to grab the suit land and they created some false documents and filed suit with false averments. The defendants claimed that plaintiff and her father never in possession and enjoyment of the suit land and suit itself is not maintainable and consequently the injunction petition is also not maintainable because the petitioner could not establish the prime ingredients for entitlement of injunction i.e. *prima facie* case, balance of convenience and irreparable loss and injury.

d) I.A.No.281 of 2014 was enquired into by the trial Court. It appears at the instance of defendants a report was called for from Tahsildar, Dammipeta Mandal and accordingly the Tahsildar submitted his report in Rc.No.B/54/2016 dated 18.02.2016 stating that defendants have been in possession and enjoyment of the suit property.

5) Be that as it may, the trial Court having regard to the overwhelming revenue record in favour of plaintiff such as online 1B Adangal/Pahanies for the Faslies 1422, 1423, 1424 and 1425 and Pattadar pass book and title deeds showing the possession and enjoyment of the plaintiff in respect of suit land in an extent of Ac.2.01 gts. in Sy.No.26/A, had come to the conclusion that the plaintiff is in possession and enjoyment of the property by the date of suit. In that view, the trial Court did not place reliance on the report submitted by Tahsildar. The trial Court allowed the petition and ultimately made the interim injunction already granted in favour of petitioner/plaintiff, absolute.

6) Upon hearing both sides and on close scrutiny of order impugned, I find no merits in the CRP. As already stated supra, the revenue records such as Adangal/Pahanies, Pattedar pass book and title deeds etc. would clinchingly show the possession and enjoyment of the suit property by the plaintiff as on the date of suit which is *sine quo non* for granting interim injunction. As rightly observed by the trial Court, though the defendants claimed that they got the suit property by exchange of land with the father of the plaintiff, they could not produce any reliable evidence in that regard. Therefore, that aspect cannot be considered at this stage. Sofaras status report called from the Tahsildar to know the possession and enjoyment of the suit land is concerned, it must be said such practice of calling for report is deprecated by the High Court in a

decision reported in *Naloth Veeru @ Heerala and others vs. Guguloth Mangi*¹. It was observed thus:

“I am of the opinion that the lower Court has committed a fundamental error in calling for the report from the Tahsildar and placing reliance on the same. The lower Court is discharging the functions of a Civil Court in the Agency Areas. Placing reliance on a report without summoning its author and examining him is something alien to the procedure before a Civil Court. If the lower Court felt the necessity of eliciting the opinion of the Tahsildar regarding physical possession of the suit property, the appropriate course for it would have been to summon the Tahsildar and examine him as a Court witness. Such a procedure would have ensured that opportunity is given to both the parties to cross-examine such witness. By calling for a report from the Tahsildar and placing reliance thereon, without giving an opportunity to the petitioner to cross-examine Tahsildar the lower Court has committed a serious jurisdictional error.”

- 7) In that view of the matter, the status report called for by the trial Court in the manner he did is against the cannons of procedural laws.
- 8) There are no merits in the Civil Revision Petition and accordingly the CRP is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dt: 02.09.2016
Murthy

¹ 2012 (2) ALD 455