

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4104 OF 2016

O R D E R

This civil revision petition under Article 227 of the Constitution was filed by the defendant in O.S.No.165 of 2013 on the file of the learned VII Metropolitan Magistrate-cum-Junior Civil Judge, Cyberabad at Hayathnagar.

By order dated 26.08.2015, the trial Court dismissed I.A.No.504 of 2013 filed by the plaintiff in the suit for a temporary injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property pending disposal of the suit. Against the said order, the plaintiff filed C.M.A.No.158 of 2015 before the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. By order dated 08.07.2016 passed therein, the appellate Court reversed the order of the trial Court and granted a temporary injunction to the plaintiff as prayed for. Aggrieved thereby, the defendant preferred this civil revision petition.

Heard Sri S.Satyam Reddy, learned senior counsel representing Smt.K.V.Rajasree, learned counsel for the petitioner/defendant, and Sri K.Goverdhan Reddy, learned counsel on caveat for the sole respondent/plaintiff.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.165 of 2013 was filed by the plaintiff for a perpetual injunction restraining the defendant from causing any sort of interference in the peaceful possession and enjoyment of the plaintiff over the suit schedule property. I.A.No.504 of 2013 was filed therein by the plaintiff under Order 39 Rules 1 and 2 CPC for an interim

injunction restraining the defendant from interfering with his peaceful possession and enjoyment over the suit schedule property. Perusal of the order dated 26.08.2015 passed by the trial Court dismissing this I.A. reflects that the plaintiff claimed that he was the absolute owner and possessor of the agricultural land admeasuring Ac.0.36 guntas in Sy.No.41/1 of Manneguda Village, Hayathnagar Mandal, Ranga Reddy District, having acquired title under the assignment patta issued by the Tahsildar, Hayathnagar, on 24.10.1983. The plaintiff claimed that he had been in continuous possession and enjoyment of the said land and that the revenue authorities also issued him a title deed and pattadar pass book after carrying out necessary mutation in the revenue records. He further claimed that he had cultivated seasonal crops in the said land and while so, the defendant and his family members tried to interfere with his possession in the year 2002 constraining him to file O.S.No.427 of 2002 before the learned Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, and obtain an interim injunction therein. However, as the defendant gave an assurance that they would not interfere with the possession of the plaintiff over his land, the suit was not pursued and it was dismissed for default on 18.04.2008. The plaintiff asserted that on 15.10.2013, the defendant came to the suit schedule property and again tried to interfere with his possession and he could resist the same only with great difficulty. He further asserted that the defendant and his henchmen again threatened to dispossess him of the suit schedule property on 02.11.2013 and also removed the cuddy stones on the suit schedule property. He cited these grounds for filing the fresh suit for a perpetual injunction and prayed for interim protection.

The defendant filed a counter contesting the I.A. Therein, he stated that the plaintiff had created a fabricated document and in the guise thereof, he was interfering with the defendant's agricultural land in Sy.No.42/1, admeasuring Ac.41.10 guntas, at Manneguda Village. He stated that upon his representation to the Special Grade Deputy Collector-cum-Revenue Divisional Officer, East Division, Ranga Reddy District, the assignment patta granted to the plaintiff was cancelled. He contended that when the plaintiff tried to interfere with his possession, he filed a police complaint which was taken on record in Crime No.313 of 2012 on the file of Vanasthalipuram Police Station. He accordingly prayed for dismissal of the I.A.

Considering these rival claims, the trial Court observed that the plaintiff's claim was that he was assigned the suit schedule property in 1983 whereby he remained in continuous possession thereof ever since and that he had earlier filed an injunction suit against the defendant but allowed it to be dismissed for default. Noting that the plaintiff had come up with the instant suit after a lapse of ten years thereafter, the trial Court observed that the assignment patta under which the plaintiff claimed title had been cancelled by the Joint Collector-I, Ranga Reddy District, under Ex.R1 proceedings dated 26.05.2014. The trial Court opined that as the Joint Collector held that the plaintiff was not entitled for the assignment and as the same was cancelled, he could not claim possession over the suit schedule property. Further, the trial Court found that the plaintiff had not approached the Court with clean hands as he had suppressed the factum of the cancellation of the assignment in his favour by the Joint Collector-I, Ranga Reddy District, and accordingly held him disentitled for an interim injunction.

In appeal, the appellate Court observed that the cancellation of the assignment in favour of the plaintiff had not attained finality as W.P.No.17661 of 2014 was filed by the plaintiff in relation thereto before this Court and an order of *status quo* was passed therein which continued to hold the field. The appellate Court also took note of the fact that the plaintiff had not only produced the assignment patta dated 24.10.1983 (Ex.P13), but also the pattadar pass book and title deed (Exs.P14 and P15) issued to him by the revenue authorities under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for brevity, 'the Act of 1971'). The tax receipts evidencing payment of tax by the plaintiff in relation to the land were also filed (Exs.P10 to P12). The appellate Court also noted that in the writ proceedings initiated by the plaintiff aggrieved by the cancellation of the assignment patta, a learned Judge of this Court had observed in the interim order passed therein that there could be no doubt about the possession of the plaintiff. The appellate Court further observed that though the Joint Collector had cancelled the assignment under Ex.R1 dated 26.05.2014, the same was not given effect to owing to the *status quo* order passed by this Court in the writ proceedings. Observing that there was no material to conclude that the plaintiff had been divested of possession, the appellate Court held that he was entitled to protect his possession and accordingly granted an interim injunction in his favour as prayed for.

Ex.R1 dated 26.05.2014 reflects that the Joint Collector-I, Ranga Reddy District, found that the plaintiff, being the assignee, was never in possession of the said assigned land. Notably, the basis for this observation could only have been the report submitted by the Deputy Collector and Tahsildar, Hayathnagar Mandal, under letter dated 19.11.2013, which finds reference therein. However, this letter,

to the extent referred to by the Joint Collector, demonstrates that there was no mention as to the factum of possession of the plaintiff over the suit schedule property or otherwise by the Deputy Collector and Tahsildar.

Significantly, cancellation of the assignment patta has not been given effect to by virtue of the *status quo* order passed by this Court and therefore, the cancellation proceedings are yet to attain finality. Further, various documents placed on record by the plaintiff clearly evidenced his possession over the suit schedule property which was assigned in his favour as long back as in the year 1983. It is also pertinent to note that when the father of the defendant filed Case No.E4/6943/2003 before the Joint Collector-II, Ranga Reddy District, asserting a claim over the land admeasuring Ac.3.04 guntas in Sy.Nos.40/2 and 41/2 of Manneguda Village, Hayatnagar Mandal, Ranga Reddy District, and seeking cancellation of the assignment in favour of the plaintiff over an extent admeasuring Ac.1.34 guntas and 1.10 guntas in Sy.Nos.40/2 and 41/2 of Manneguda Village, the Joint Collector-II, Ranga Reddy District, passed orders dated 02.12.2006 holding that the defendant's father's claim over the land was without merit and liable to be rejected, but as regards the authenticity of the assignment in favour of the plaintiff and his eligibility for the same, the Revenue Divisional Officer, Ranga Reddy District, East Division, was directed to conduct an enquiry and take necessary action.

Sri K.Goverdhan Reddy, learned counsel, would state that it was pursuant to this direction that the Deputy Collector and Tahsildar, Hayatnagar Mandal, submitted the report dated 19.11.2013 which ultimately led to the cancellation of his client's

assignment by the Joint Collector-I, Ranga Reddy District, under Ex.R1 dated 26.05.2014.

It is no doubt true that a litigant who approaches the Court for relief should be forthright and should disclose all relevant particulars. Though the affidavit filed in support of I.A.No.504 of 2013 in O.S.No.165 of 2013 is not placed on record, it is not disputed by Sri K.Goverdhan Reddy, learned counsel, that his client failed to mention therein that the assignment patta of 1983 had been cancelled by the Joint Collector-I, Ranga Reddy District, under proceedings dated 26.05.2014. However, suppression may not, in itself, be sufficient to non-suit a litigant. It may also be that, due to wrong advice or being unaware of legal requirements, a litigant may not disclose the full facts relating to the litigation. In the present case, though cancellation of the assignment patta was a relevant fact, indisputably such cancellation had not attained finality and had also not been given effect to owing to the *status quo* order passed by this Court in writ proceedings. The plaintiff therefore did not derive any benefit by withholding information as regards the cancellation of the assignment patta. This Court is therefore of the opinion that withholding of this information was not enough for the trial Court to deny interim relief to the plaintiff. The trial Court committed a further error in getting completely carried away by the cancellation of the assignment patta overlooking the fact that it was the subject matter of challenge before this Court. For the purpose of granting an interim injunction pending the suit, the most relevant fact for the trial Court was to examine whether the plaintiff was in possession. Once he established, *prima facie*, that he was in possession and that the balance of convenience tilted in his favour, justifying the grant of an interim injunction to prevent irreparable loss being caused to him,

the plaintiff would be entitled to relief. The question of his title to the land, in terms of the assignment patta being cancelled, would not be germane to such an exercise. As rightly pointed out by the appellate Court, there was sufficient material placed on record in evidence of the plaintiff being in possession as the pahanies reflected his name in the pattadar and possessor columns. That apart, he also filed tax receipts in evidence of his paying tax, consequent to his possession over the suit land. More clinching is the fact that he was also issued a title deed and pattadar passbook under the provisions of the Act of 1971, which have admittedly not been subjected to challenge till date. Section 6 of the Act of 1971 creates a statutory presumption as to the correctness of the entries made in the record of rights until the contrary is proved. Therefore, the presumption which attaches to Ex.P14 title deed and Ex.P15 pattadar passbook had to be rebutted by the defendant, so as to sustain his plea that the plaintiff was not in possession. However, except for Ex.R1 cancellation proceedings dated 26.05.2014, the defendant did not adduce any other evidence to rebut this statutory presumption.

Given the overwhelming documentary evidence in proof of the plaintiff's possession of the suit schedule property, this Court finds no grounds to interfere with the injunction granted by the appellate Court on the strength thereof.

The Civil Revision Petition is therefore found to be without merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

30th DECEMBER, 2016

PGS