

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.2457 OF 2016

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ORDER:

This Revision, filed under Article 227 of the Constitution of India, challenges the order passed by the learned Junior Civil Judge, Tadipatri, Anantapur District, in I.A.No.157 of 2016 in I.A.No.144 of 2016 in O.S.No.49 of 2016.

2. Heard Sri N.Ranga Reddy, learned counsel, appearing for the petitioners and Sri N.Chandra Sekhar Reddy, learned counsel, appearing for the respondents.

3. The respondents herein instituted O.S.No.49 of 2016 against the petitioners seeking permanent injunction. Along with the said suit, respondents also filed I.A.No.144 of 2016 for temporary injunction under the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure (herein after, 'the C.P.C.'). The learned Junior Civil Judge, on 04.03.2016, granted *ad interim* injunction in favour of the respondents.

4. In the said I.A.No.144 of 2016, on 09.03.2016, respondents herein filed I.A.No.157 of 2016 under Section 151 of the C.P.C. seeking police aid. Resisting the said application, seeking police aid filed by the respondents/plaintiffs, defendants/petitioners herein filed a counter. The learned Junior Civil Judge, by way of an order dated 27.04.2016, allowed the said application granting police aid/protection for implementing the orders granted in I.A.No.144 of 2016.

5. The said order passed by the learned Junior Civil Judge granting police aid, is under challenge in the present Revision filed under Article 227 of the Constitution of India.

6. It is contended by the learned counsel for the petitioners that the order under challenge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 39 Rules 1, 2 and 3(A) of the CPC. It is the further submission of the learned counsel that without deciding the injunction application filed by the respondents herein, the Court below erroneously allowed the application filed for police aid. It is also the submission of the learned counsel that the Court below ought not to have granted the police protection basing on the *ex parte* injunction order. It is also contended by the learned counsel that the Court below ought to have decided the injunction application first before considering the present application filed for police protection. In support of his submissions and contentions, learned counsel for the petitioners places reliance on the judgment of this Court in **Mettu Malyadri Vs. Mettu Sivaiah**^[1].

7. On the contrary, it is vehemently contended by the learned counsel for the respondents that there is no illegality nor there exists any infirmity in the impugned order and in the absence of the same, the petitioners herein are not entitled for indulgence of this Court under Article 227 of the Constitution of India. It is also the emphatic contention of the learned counsel for the respondents that since the orders passed by the learned Junior Civil Judge are supported by valid and convincing reasons, no interference of this Court is warranted.

8. In the above backdrop, now the issue that emerges for consideration of this Court is:

“Whether the order passed by the Court below is in accordance with law or the same warrants any interference of this Court under Article 227 of the Constitution of India?”

9. The information available before this Court manifestly discloses that along with the suit, the respondents herein filed I.A.No.144 of 2016

for temporary injunction under the provisions of Order 39 Rules 1 and 2 of the C.P.C. and the learned Junior Civil Judge on 04.03.2016 granted *ex parte* injunction. It is also brought to the notice of this Court, during the course of arguments, that the defendants/petitioners herein also filed counter in I.A.No.144 of 2016. It is also clear from the record that on 09.03.2016, the plaintiffs/respondents herein filed the instant I.A.No.157 of 2016 under Section 151 of the C.P.C. seeking police aid for implementation of the *ex parte* injunction order granted by the Court below. In fact, by way of filing a counter, the petitioners herein took specific objections for the very maintainability of the application for enforcement of the *ad interim* injunction by securing police protection. The learned Junior Civil Judge, as evident from a reading of the impugned order, did not consider properly the objections of the petitioners in their counter. The learned Junior Civil Judge passed the order under challenge on 27.04.2016 and it is the specific submission of the learned counsel for the petitioners that in I.A.No.144 of 2016, the petitioners herein filed their counter on 21.04.2016. The learned Junior Civil Judge, in fact, ought to have taken into account the provisions of

Order 39 Rule 3(A) of the C.P.C., which mandates that the Court shall make an endeavour to dispose of the application within thirty days.

10. In this context, it may be appropriate to refer to the judgment of this Court in **Mettu Malyadri Vs. Mettu Sivaiah (referred**

1 supra), wherein at Paragraph No.12, this Court held as under:

“12. In this case, admittedly the son of the petitioner filed a suit for partition that means the son of the petitioner has been claiming share in the property. It may be a fact that though the respondent suffered an order of injunction he has not carried the matter in appeal and the injunction order granted against him is still in force. The fact remains that the injunction order passed against the petitioner is in force. The petitioner cannot interfere with the possession of the respondent, but at the same time

the fact remains that the son of the petitioner filed a suit for partition and also claimed that the physical features of the plaint schedule property should not be changed during the pendency of the said suit and it appears that the matter is pending before the Senior Civil Judge Court, Kavali. In the circumstances, it appears that the petitioner though claimed that the respondent interfered when he tried to make a construction on 22.12.2012 and the said fact is not denied by the petitioner, but having regard to the facts and circumstances of the case it appears that the lower Court is not justified in granting police aid. The lower Court ignored the relationship between the parties and rival claims of the parties and the fact that the son of the petitioner filed a suit for partition before the Senior Civil Judge Court, Kavali and the same is pending. Normally in civil matters unless and until the rights have been crystallized and it is clear to the mind of the Court that a party without any semblance of right is violating the orders of the Court the interference of the police should not be called for.”

11. The law laid down by this Court, in the case cited supra, is squarely applicable to the facts of the present case also. Therefore, this Court is of the considered opinion that the order under challenge cannot be sustained in the eye of law.

12. For the aforesaid reasons, Revision Petition is allowed, setting aside the order dated 27.04.2016 passed by the learned Junior Civil Judge in I.A.No.157 of 2016 in I.A.No.144 of 2016 in O.S.No.49 of 2016; and I.A.No.157 of 2016 is remanded to the Court below for fresh consideration after deciding I.A.No.144 of 2016.

13. Miscellaneous petitions pending consideration, if any, in the Revision Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

03.06.2016
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[\[1\]](#) 2014 (3) ALT 17.