

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos. 5109 OF 2014

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful respondents/defendants is directed against the orders dated 02.12.2014 passed in C.M.A.No.56 of 2014 whereby the learned I Additional District Judge, Warangal

while dismissing the said Civil Miscellaneous Appeal had confirmed the decree and decretal order dated 26.09.2014 passed in I.A.No.618 of 2014 in O.S.No.352 of 2014 filed under Order XXXIX Rules 1 and 2 of the CPC for grant of a temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property.

2. I have heard the submissions of the learned counsel appearing for both the parties. I have perused the material record.

3. The facts that lead to the filing of this revision, in brief, are as follows:

The plaintiff brought the suit for perpetual injunction *inter alia* claiming that she had purchased the plaint schedule property under a registered sale deed dated 15.03.2007 from the owner and pattadar P. Bal Reddy, who is none other than the father of the first defendant/the first petitioner herein and that the possession of the property was delivered to her under the said sale deed and that she had constructed a house bearing no.28-5-304 in the said plot no.28 purchased by her under the said sale deed. In the plaint it is *inter alia* averred that a property of an extent of Ac.2-12 guntas in

Sy.nos.142, 143, 110/B was laid out into plots by the plaintiff's vendor, who was the original owner of that property; and, that the plaintiff had purchased plot no.28 in survey nos.142 and 110/B admeasuring 408 square yards, which is the plaint schedule property and that when an interference with her possession was sought to be made, she had filed the suit and the aforesaid interlocutory application for temporary injunction. The defendants had resisted the said application filed by the plaintiff *inter alia* contending that Bal Reddy is not the owner and possessor of the lands in Survey nos.143/1, 143/2 and S.No.1210/P of Hanamkonda revenue village and that Pegadapalli Gram Panchayat comes under Hasanparthy Mandal of Warangal and that the plaintiff by clubbing the areas of two different properties is trying to encroach the land of the others and that of the defendants and that there is a dispute about identification of schedule property and that in the circumstances, the contention that the property was being laid out does not arise and that the vendor of the plaintiff had declared before the ULC authorities that he is the owner and possessor of the land in Sy. nos.110/C, 142, 144 of an extent of Ac.3.06 guntas, Ac.15.13 guntas and Ac.0.13 guntas respectively and that the vendor of the plaintiff had no land in Sy.nos.143 and 110/B and that therefore, the plaintiff cannot claim any rights in the plaint schedule property and that the vendor of the plaintiff had executed the sale deed for plot in Sy.no.142 and that having found that no such land is available, they had planned to grab the property of the others and got executed a rectification deed and that the said fact shows the intention of the plaintiff to grab the property and that the plaintiff's sale deed and the rectification deed are not valid and that the land in the survey nos.143/1, 143/2 and 110/B exclusively belongs to the 2nd defendant and she had sold Ac.10.00 guntas of

land to the defendants 4 and 5 under registered sale deed and they were given pattadar passbook and title deed book and that Sy.no.110/B was assigned bye-numbers such as 110/B1 in respect of Ac.3.00 guntas and 110/B2 in respect of Ac.3.06 guntas on segregation and that the vendor of the plaintiff had filed a suit for relief of injunction in respect of land in Sy.no.110/B against the 1st defendant and the same is pending and that the vendor of the plaintiff had also filed an interlocutory application in the said suit and that the learned III Additional Junior Civil Judge, Warangal had held in that application in that suit that the vendor of the plaintiff is not the owner of the land in Sy.no.110/B and that the said suit is pending and that the plaintiff is not living in the suit schedule property and that the 2nd defendant is the wife of the 1st defendant and that the 3rd defendant is their daughter and that when the property being claimed by the plaintiff is not available on ground, the question of interfering with the possession or dismantling the house do not arise and that the plaintiff has no case or balance of convenience in her favour and hence, her petition is liable to be dismissed.

4. At the hearing before the trial court, exhibits P1 to P10 and R1 and R28 were marked. The trial court having analyzed the pleadings and adverted to the relevant case law cited before it had recorded a finding that the plaintiff established her lawful possession and a *prima facie* case and had further satisfied the necessary other ingredients for granting a temporary injunction had accordingly granted a temporary injunction. The aggrieved defendants filed the aforementioned CMA.

The learned Additional District Judge dismissed the said appeal, as already noted, and had confirmed the orders of the court below.

Therefore, the aggrieved defendants had preferred.

5. The learned counsel for the revision petitioners/defendants while reiterating their case had contended that documents exhibited on the side of the defendants establish that there is no land in the suit survey number as being claimed by the plaintiff and that in the circumstances stated by the defendants, the plaintiff could not prove her possession or ownership in respect of the plaint schedule property and that no such plaint schedule property is existing on the ground and that under the guise of a claim in respect of the plaint schedule property, she is trying to encroach upon the property of the second defendant and that both the courts below did not appreciate the facts correctly and law in proper perspective and that therefore, the orders passed in the CMA as well as the orders impugned in the CMA are both liable to be set aside and that the injunction petition is liable to be dismissed. Per contra, the learned counsel for the plaintiff while supporting the orders of the court below had reiterated the contentions of the plaintiff, which are extracted supra.

6. I have carefully gone through the pleadings and the material record. I have given earnest consideration to the facts and the submissions. On a careful perusal of the record, this court is of the considered view that both the courts below while recording concurrent findings of fact in regard to *prima facie* lawful possession of the plaintiff over the plaint schedule land had appreciated the facts correctly and the legal position in the proper perspective came to the conclusion that the plaintiff established not only a *prima facie case* for granting a temporary injunction in her favour but also the necessary ingredients namely, balance of convenience in her favour and the irreparable loss that would

ensue if no temporary injunction as prayed for is granted. Except asserting the case, which was asserted before the Court below and which was not accepted by the Court below after careful analysis of the facts and the law applicable to the case, no tenable or valid grounds are urged in the civil revision petition calling for interference with the orders of the Court below. The temporary injunction order was granted by the trial Court by order dated 26.09.2014. The Court below while dismissing the CMA of the defendants had confirmed the said orders of the trial Court on 02.12.2014. Thus, the plaintiff is having an injunction order in her favour since September, 2014. The revision petitioners/defendants could not point out any patent illegality or jurisdictional error or any such error in the orders of the Court below calling for interference. In view of the fact that the concurrent findings of facts recorded by the Courts below are well supported by valid reasons, this Court finds that there is no merit in the revision and that the revision is liable to be dismissed.

7. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs. Considering the fact that the suit is of the year 2014, the trial Court is directed to dispose of the suit as expeditiously as possible and preferably within six months from the date of receipt of a copy of this order.

As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

July 1, 2016
LMV