

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.3100 of 2016

ORDER:

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This Revision is filed challenging the order dt.07-04-2016 in C.M.A.No.2 of 2016 of the Principal District Judge, West Godavari at Eluru confirming the order dt.28-12-2015 of the Principal Senior Civil Judge, Eluru in I.A.No.765 of 2015 in O.S.No.220 of 2015.

2. The petitioners herein are defendants in the said suit.

3. The respondents filed the said suit against petitioners for a perpetual injunction restraining the petitioners from interfering with their possession and enjoyment of the plaint schedule properties.

4. The plaint schedule property consists of four items, which the respondents claim to have purchased under four registered sale deeds dt.20-12-2014 from Alla Suresh Babu.

5. The respondents contend that their vendor was the adopted son of Alla Venkateswara Rao and his wife.

6. It is not disputed that the 1st petitioner is the brother

of Alla Venkateswara Rao. Respondents contend that a registered settlement deed Ex.A-14 was executed in favour of their vendor by his adopted father on 15-06-2007, that their vendor was issued pattadar pass books and petitioners are in no way concerned with the plaint schedule properties. They contend that on 22-05-2015, the petitioners tried to trespass into the plaint schedule properties with deadly weapons and that was why the suit was filed.

7. The respondents filed I.A.No.765 of 2015 under Order 39 Rules 1 and 2 of C.P.C. against petitioners for grant of temporary injunction pending suit.

8. Counter-affidavit was filed by petitioners denying that the respondents' vendor Suresh Babu is the adoptive son of late Alla Venkateswara Rao. It was also stated that Ex.A-14 registered settlement deed was not acted upon. The petitioners contend that when the vendor of respondents was never in possession and enjoyment of the property, respondents could not have filed the suit without impleading their vendor. They alleged that the plaint schedule properties are ancestral properties of the petitioners and the petitioners alone are the legal heirs of late Alla Venkateswara Rao.

9. Before the trial Court, the respondents marked Exs.A-1 to A-29 and the petitioners marked Exs.B-1 to B-17.

10. By order dt.28-12-2015, the trial Court granted temporary injunction in favour of respondents against petitionrs. It relied upon Ex.A-6 filed by respondents, which are 10(1) Adangals (two in number) and held that they show that the vendor of respondents was in possession of the lands in R.S.No.865/4 and 966. It also observed that Ex.A-7 1(B) Namuna/ROR also shows that the vendor of the respondents got the property covered by above survey numbers. It also relied upon Ex.A-8, certified copy of the order in I.A.No.1186 of 2009 in O.S.No.248 of 2009 filed by 1st petitioner against the vendor of respondents and two other persons, which was dismissed by the Additional Senior Civil Judge, Eluru. The trial Court observed that in that order, it was held that Alla Venkateswara Rao was having title in respect of Ac.4.46 cents of land, which was conveyed to Alla Suresh Babu under registered settlement deed dt.15-06-2007. It also referred to Exs.A-15 and A-16 pattadar pass book and title deed issued to the vendor of respondents. It noted that the issue regarding the validity of the adoption as well as execution of the registered settlement deed cannot be

decided at the stage of Interlocutory Application. Referring to the documents filed by petitioners, it held that Ex.B-3 adangals show that the 1st petitioner was in possession of only Ac.1-40 cents in R.S.No.865/4 and Alla Suresh Babu, vendor of respondents, was in possession of similar extent in the said survey number. It also observed that they show that 1st petitioner has been in possession and enjoyment of Ac.4.46 cents in R.S.No.966 and Alla Suresh Babu is in possession of Ac.3.06 cents in R.S.No.966. It therefore concluded that the respondents have *prima facie* established their possession over the plaint schedule property, balance of convenience is in their favour, and if injunction is not granted the very purpose of filing the suit will be defeated.

11. Challenging the same, the petitioners filed C.M.A.No.2 of 2016. By order dt.07-04-2016, the said C.M.A. was also dismissed. The lower appellate Court held that, at the stage of considering the temporary injunction application, primarily possession has to be considered apart from balance of convenience and irreparable loss. It observed that the respondents proved their possession over the subject properties in view of Exs.A-6, A-7, A-5, A-14, A-15 to A-17. It also observed that only Ex.B-3 adangals for 2011-12 were filed by

petitioners. It therefore concluded that *prima facie* title is with respondents and they are in possession of the subject land.

12. Assailing the same, this Civil Revision Petition is filed.

13. Heard Sri M.Suryanarayana, learned counsel for petitioners.

14. Learned counsel for petitioners contended that the findings of both the Courts below cannot be sustained, that when the very adoption of Alla Suresh Babu by Alla Venkateswara Rao is doubtful, on the basis of Exs.A-1 to A-4 and A-14, the Courts below could not have granted injunction in favour of respondents against the petitioners. He therefore prays that the orders passed by both the Courts below be set aside.

15. In the present case, the suit filed by respondents against petitioners was one for perpetual injunction. Therefore primarily the issue of possession on the date of filing of the suit is relevant. Title to the properties may be incidentally gone into while deciding the suit as well as application for temporary injunction. In the present case, both the Courts below, after considering the evidence adduced by parties, held that the respondents proved

their possession on the date of filing of the suit by filing Exs.A-6 and A-7. The petitioners, having sought a temporary injunction against the respondents' vendor Alla Suresh Babu in I.A.No.1186 of 2009 in O.S.No.249 of 2009 failed to get it in Ex.A-8. Ex.B-3 adangal filed by petitioners relates to 2011-12 and the validity of the certificates Exs.B-1 and B-2 filed by petitioners, which are issued by the Village Revenue Officer, needs to be established during trial. These concurrent findings of fact are not shown by petitioners to be either based on no evidence or perverse.

16. I therefore do not find any error of jurisdiction in the orders passed by the Courts below warranting interference by this Court under Article 227 of the Constitution of India.

17. Accordingly, the Civil Revision Petition is dismissed. However, it is made clear that the trial Court shall decide the suit uninfluenced by the observations made by it in its order in I.A.No.765 of 2015 or the observations made by the Principal District Judge in C.M.A.No.2 of 2016 or by this Court while disposing of this Revision. No costs.

18. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-07-2016

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