

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.155 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is directed against the orders dated 27.11.2015 of the learned Sub-Divisional Magistrate-cum-Special Assistant Agent to Government (Mobile Court), Bhadrachalam passed in IA.no.144 of 2015 in OS.no.121 of 2015 filed by the plaintiff under Rule 42 (c) of Agency Rules for grant of a temporary injunction restraining the respondents/defendants and his men, agents or anybody from interfering with the peaceful possession and enjoyment of the schedule property till disposal of the suit.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel appearing for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3 The introductory facts, in brief, are as follows:

The plaintiff brought the suit before the Mobile Court for a perpetual injunction in respect of Ac.1.75 cents in Sy.no.27/2 of Suravaram village of Dummagudem Mandal of Khammam District morefully described in the schedule annexed to the plaint. In the said suit, the plaintiff had also filed the aforementioned IA for grant of a temporary injunction. The defendants filed a counter resisting the said application. One Punem Dharmaiah, a third party, filed an interlocutory application requesting for his impleadment as a party respondent in the above said IA and as a defendant in the suit. The learned Magistrate had not disposed of the said IA and by the orders impugned had disposed of the IA filed by the plaintiff for grant of a temporary injunction.

4. The case of the plaintiff is this: 'The property was recorded in the revenue records in the name of Punem Venkataiah as pattedar and enjoyer.

And, after his death, his wife Punem Sithamma had succeeded to the said property. They had no children. The said Sithamma is the sister of the father of the plaintiff and she is closely related to the plaintiff's family. The plaintiff's father had performed the last rites of the said Venkataiah and Sithamma as they had no issues. On the death of her husband Venkataiah, Sithamma had lived with the family of the plaintiff. The plaintiff's father used to look after her. During her lifetime, she had executed a Will dated 19.03.2008 in favour of the plaintiff bequeathing the suit schedule property to him. On her death, the bequests in the said Will came into operation. Therefore, the plaintiff is the absolute owner in possession of the suit schedule property. He has been paying to the concerned authorities the water tax towards lift irrigation. He has been raising paddy crop. While so, he had refused the requests made by the defendants on 28.06.2015 and 05.07.2015 to lease out the land to them. Therefore, they had developed a greedy eye over the lands and are trying to grab the suit schedule land by force. And, in fact they had tried to grab the land forcibly on 05.07.2015; but, the plaintiff and his men did not allow them to enter into the land. The defendants are having support of a political leader and are openly declaring that they are going to occupy the land. Therefore, the plaintiff is constrained to file the suit for perpetual injunction and the IA for a temporary injunction.'

5. *Per contra*, the defence of the defendants is this: 'The plaintiff is neither the owner nor the possessor of the suit schedule land. He had never cultivated the suit land at any time. The alleged Will deed said to have been executed by Punem Sithamma in favour of the petitioner is not true. She had never executed any such document. She is not the pattedar and possessor of the suit schedule land. Punem Venkataiah is the pattedar. Since Venkataiah and Sithamma had no issues, they had adopted Punem Dharmaiah, when he was of tender age. They had treated the said Dharmaiah as their son. They had given their properties to him by executing a settlement deed in his favour on 29.12.2001. He had maintained his adopted parents during their life times. He worked for the family of Venkataiah from his childhood. He is the nephew of these defendants. They

are extending their co-operation to him for cultivating the schedule land even during the life time of Venkataiah and Sithamma. On their deaths, Punem Dharmaiah became the exclusive owner of the suit schedule property. He had planted the paddy crop during the suit year. Even the owners of the adjacent lands gave third party affidavits to corroborate the said version. When there was a dispute, the village elders conciliated and resolved that Punem Dharmaiah is the rightful person and that he is cultivating the lands even during the lifetimes of Venkataiah and Sithamma with their consent. Neither the plaintiff nor his parents are concerned with the suit schedule land. Punem Dharmaiah filed OS.no.158 2015 on the file of the Mobile Court seeking a perpetual injunction against the plaintiff herein and his father. Since Punem Dharmaiah has come into exclusive possession of the property on 29.12.2001 by virtue of the settlement deed executed by his adoptive parents, he is the rightful owner entitled to deal with the property and continue in uninterrupted possession of the property. Hence the petition is liable for dismissal.'

6. The learned counsel for the plaintiff would contend as follows:

The plaintiff brought the suit for a perpetual injunction and the subject IA for grant of temporary injunction basing on a Will dated 19.03.2008 executed by Sithamma, the wife of the original pattedar Venkataiah. Admittedly, the said Venkataiah and Sithamma had no children and the said Venkataiah is the pattedar, owner and possessor of the property. The plaintiff pleaded that on the death of the said Venkataiah, the property devolved upon his wife-Sithamma and that after her death the property devolved upon the plaintiff as per the bequests under the Will executed by her. The plaintiff filed adangals for the years 2013-2014, 2014-15, water cess receipts and the Will dated 19.03.2008. The order impugned was passed without considering the said documents. While disposing of the IA filed for temporary injunction, the court is only concerned with the issue as to who among the parties is in possession of the property. The court below had erroneously observed that water cess receipts are not filed without looking into the documents filed. The court below ought to have seen that the defendants on the contrary have not

produced any documentary evidence. It is not the case of the defendants that they are in possession of the property. They are pleading the case of a third party by name Dharmaiah. Therefore, the Court below ought not to have given any credence to the defence. In view of the *status quo* orders the petitioner is not in a position to enter into the suit land in question though he is in possession of the suit land. The orders are causing great prejudice to him.

7. On the other hand, the learned counsel for the defendants while supporting the orders of the Court below would submit as follows:

The court below having held that the plaintiff has no *prima facie* case and balance of convenience in his favour had directed the parties to maintain *status quo* as on the date of the filing of the suit. Therefore, the plaintiff cannot be heard to say that he is in possession of the property. It is the settled practice in Agency Courts to call for reports of revenue officers concerned before disposing of the interlocutory applications. In the case on hand also a report was called for from the Tahasildar concerned and the report of the Tahasildar corroborated the version of the defendants that their nephew/Punem Dharmaiah, a third party to the present suit, is in possession of the suit schedule land. In support of their version that Dharmaiah is in possession and is cultivating the lands, the defendants had also filed third party affidavits of the owners of the adjacent lands. Though the plaintiff is aware that Dharmaiah is the rival claimant, the suit is mischievously filed without impleading the said Dharmaiah as a party to the suit. The said Dharmaiah had also filed a suit-OS.no.158 of 2015 for a perpetual injunction against the plaintiff and his father to prevent them from succeeding in their illegal efforts. Further, the said Dharmaiah is the adopted son of Sithamma and Venkataiah and he had looked after them till their respective deaths; and being their adopted son he looked after the property on their behalf till the death of Sithamma. As an adopted Son and by virtue of the document executed by Sithamma, Dharmaiah is the only rightful owner and pattedar of the property. The Court below having recorded a finding that the plaintiff has no *prima facie* case granted the order of *status quo*. The said order needs no

interference in the facts and circumstances of the case.

8. I have noted the submissions. By the orders impugned, the learned Sub-Divisional Magistrate while dismissing the application for temporary injunction filed by the plaintiff had directed both the parties to maintain status quo as on the date of the filing of the suit until further orders, and had not disposed of the application filed by a third party for his impleadment as a party to the application in IA.no.144 of 2015. Further, though certain documents are filed by the plaintiff the same were not permitted to be exhibited during the course of enquiry. Reliance was placed on a report obtained from the Revenue officer concerned in regard to possession over the property. The defendants are not claiming ownership and possession over the suit land. They are claiming that their nephew Dharmaiah is in possession and thus they are pleading the cause of the said 3rd party. According to the defence set up the defendants, the said Dharmaiah had also filed a suit-OS.no.158 of 2015 for a perpetual injunction against the plaintiff and his father to prevent them from succeeding in their illegal efforts. It is not clear as to whether any interim or temporary injunction order was sought for by the said 3rd party in his said suit. In view of the peculiar facts of the case, there is no need to go into the merits of the matter. Though the learned counsel for the plaintiff submitted that he had filed several documents, no documents were exhibited on either side at the time of hearing of the interlocutory application. Therefore, the contents of the documents of the parties were not adverted to and not considered by the Court below. On the other hand it was observed that receipts for the water tax paid for lift irrigation were not filed, while in-fact the said documents were filed but not permitted to be exhibited. Even the documents, if any, filed by the defendants were also not permitted to be exhibited. The defendants are not pleading their own cause, but are only pleading the cause of their nephew, who is not yet impleaded as a party. Even the report of the Tahasildar said to have been obtained by the Court below is not made part of the Court record by exhibiting it in 'C' series. When an Interlocutory Application is filed, the Court has to necessarily look into the documents of both the parties and examine the

contents thereof to find out as to whether the pleadings find support from the recitals in the respective documents. No just decision as regards the property in dispute can be made without looking into the documentary evidence that may be relied upon by both the parties. In the light of the contentions urged by both the parties, it is always necessary to refer to and carefully examine the recitals in the documents before coming to a just decision in the matter. Unless the documents filed by both the parties are exhibited, the documents will not be sent to this Court from the trial Court along with the lower Court records. Unless the documents are before this Court and are duly exhibited, it is neither possible nor is just and proper to appreciate the rival contentions.

The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the interlocutory application on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. It is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. Even going by the Principles of Natural Justice & equity and fair practices applicable to the judicial proceedings and in order to maintain transparency it is necessary to allow the parties to exhibit the documents on which they rely upon to prove a *prima facie* case and the material propositions, which they urged in their pleadings and that fall for consideration in an interlocutory enquiry. This Court in a decision in **A.P. Minerals Development Corporation Limited Hyderabad v. M/s.Trimex Minerals Pvt.Ltd.**,^[1] and another decision in **Bhopal Reddy and another v. K.Lakshmi Bhai and another**^[2] held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility

or for some other reasons of their own. In these circumstances, it is just and proper to allow the revision and remand the matter to the trial Court for disposal of the IA afresh, on merits, after following the procedure established by law, which was adverted to supra.

9. For the reasons aforementioned, the Civil Revision Petition is allowed and the order impugned is set aside and the IA.no.144 of 2015 in OS.no.121 of 2015 is remitted to the trial Court with a direction to give an opportunity to both the parties to exhibit their respective documents and then dispose of the said application afresh, on merits and in strict accord with the procedure established by law. The trial Court shall first consider and dispose of the IA filed by Punem Dharmaiah, a third party, for his impleadment as a party to the subject IA filed for temporary injunction and the suit and then dispose of on merits the IA.144 of 2015 as per the directions given in these orders. However, having regard to the facts and circumstances of the case, the order of *status quo* as on the date of the suit as directed in the orders impugned shall be in force till five weeks from today. The trial Court shall dispose of the two interlocutory applications one after the other as expeditiously as possible, preferably within five weeks from today. It is needless to state that if the suit filed by Dharmaiah is also on the file of the Court below, the application for temporary injunction, if any, filed in that suit of Dharmaiah may also be simultaneously disposed of on merits along with the IA.no.144 of 2015 in OS.no.121 of 2015, however, by separate simultaneous orders that may be made as per procedure. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

22nd April, 2016
Vjl

[\[1\]](#) 1998(1) ALT 182

[\[2\]](#) 1998(1) ALD 770