

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5264 of 2016

ORDER:

1) Aggrieved by the order dated 31.08.2016 passed in C.M.A.No.5 of 2015 on the file of the Senior Civil Judge, Puttur, wherein the learned Senior Civil Judge, reversed the orders passed in I.A.No.1338 of 2012 in O.S.No.156 of 2012 on the file of the Principal Junior Civil Judge, Puttur, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

3) The petitioner/ plaintiff filed O.S.No.156 of 2012 against the defendant seeking permanent injunction stating that out of Ac.4.84 cents of government poramboke land situated in Sy.No.88/ 9 of Kayam Village, Vadamalapet Mandal, she cleared shrubs and bushes in Ac.2.68 cents and brought it fit for cultivation. It is said that she has been in possession and enjoyment over the property and was raising crops in it. While things stood thus, the Tahsildar, Puttur assigned the said land to one Inuru Munuswamy. The petitioner purchased the said property from the said Inuru Munuswamy vide registered sale deed dated 21.08.1971. On a request made by the petitioner seeking assignment of the said land to her, the Tahsildar inspected land in Sy.No.88/ 9, conducted enquiry and assigned the same in her favour vide D.K.T.No.174/ 4/ 92, dated 30.04.1983. Later the

name of the petitioner came to be mutated in the revenue records apart from issuing pattadar pass book and title deed. The petitioner claims to have obtained loan, dug a borewell and also built a thatched house in the said land. The averments in the affidavit filed show that the petitioner herein laid a car track at a width of 20 feet in Sy.No.88/ 7 for ingress and egress to the land in Sy.No.88/ 9 from the road. It is said that the said cart track was also used to take cattle and manure etc. It is said that due to recent misunderstandings between the family of the petitioner and respondents, they are trying to close down the cart track and change the physical features, causing inconvenience to the family of the petitioner. Left with no other option, the petitioner filed O.S seeking injunction. Along with the suit she also filed an application seeking ad-interim temporary injunction.

4) A counter came to be filed denying all the averments made in the affidavit filed in support of the said petition. It is said that the respondents and their family members have been raising various crops in the said land. Recognising their possession and enjoyment, the Mandal Revenue Officer granted DKT patta in favour of second respondent to an extent of Ac.1.50 cents in Sy.No.88/ 7. It is the case of the respondents that the father of second respondent was in occupation of land admeasuring Ac.1.57 cents in Sy.No.88/ 17 and after his death, the second respondent acquired the same as she is the only daughter and she is in possession and enjoyment of the said land. It is said that about three months back they planted 150 mango saplings in the said

land. It is stated that except the second respondent no other person has a right over the land in Sy.No.88/ 7 and 88/ 17. It is specifically stated that there is no cart track with a width of 20 feet from the road in Sy.No.88/ 7, as alleged in the plaint. The land admeasuring Ac.1.50 cents in Sy.No.88/ 7, land admeasuring Ac.0.78 ½ cents in Sy.No.88-17/ A and Ac.0.78 ½ cents in Sy.No.88/ 17B in total extent of Ac.3.07 cents are in one block with ridges as per the convenience to irrigate the water. The said ridges were formed by the defendants. In para No.11 of the counter it is stated that there is a cart track existing in Sy.No.87 and 88/ 8 to reach the land in Sy.No.88/ 9. It is also stated that to reach the land in Sy.No.88/ 7 there was no existing cart track in Sy.No.88/ 7 which starts from Pudi to Tirupathi main road. It is stated that after obtaining exparte temporary injunction, the plaintiff and her family members along with their followers made hectic attempts to form a cart track in the land in Sy.No.88/ 7 and the same is recorded by the defendants. It is also stated that the defendants filed a suit O.S.No.144 of 1995 for permanent injunction against one P.Sreemanthaiah, and the Court has granted injunction. It is also stated that even as per revenue F.M.B. there is no cart track in Sy.No.88/ 7.

5) After considering the rival arguments, the trial Court granted ad-interim temporary injunction, which was reversed by the appellate Court in C.M.A.No.5 of 2015. Aggrieved by the same, the present Civil Revision Petition is filed.

6) It is to be noted that the evidence which was produced before the Court show that the petitioner herein got property to an extent of Ac.2.68 cents in Sy.No.88/ 9. Herself and her family members formed a cart track to reach the said land from the road. As defendants were trying to interfere with the said cart track, the present suit came to be filed seeking injunction. Along with the suit she also filed an application seeking ad-interim temporary injunction. In support of her plea the plaintiff got marked Exs.P1 to P7. Insofar as the defendants are concerned they got marked Exs.R1 to R8 to show that there is no cart track in Sy.No.88/ 7 and they are in occupation of the said land. Since there is a dispute with regard to existence of cart track, the trial Court appointed an Advocate-Commissioner, who submitted a report, which is marked as Ex.C1. A perusal of Ex.C1 report and rough sketch filed along with the report show that there exists a cart track. Having regard to the above the trial Court granted injunction and on appeal the same was reversed basing on the entries made in Field Measurement Book and the report of the Advocate-Commissioner submitted in O.S.No.157 of 2012.

7) The short question that arises for consideration in the present case is whether there exists a cart track in Sy.No.88/ 7?

8) As stated earlier, the finding given by the trial Court and also the appellate Court are based on the reports submitted by two different advocate-commissioners in two different suits. The

report of the advocate-Commissioner, who is appointed in the present suit, reads as under:

“The suit property is cart track and it runs East to West and it is an old one. The width of cart track is about 20 to 22 feet there is gross and thorny bushes by the sides of the cart track. I found that abutting the cart track on northern side there is thatched sapara and the defendants are residing in it. I found that recently reclaimed the land abutting the cart track on North and Southern side of land and planted Mango sapling. I found that there are stone boulders on Northern and Southern side of the land of the cart track. On Eastern side of the cart track there is agricultural land of the petitioner and the petitioner built house in the agricultural land and residing with her family. A bore well also existing in the land of the petitioner. Except the suit cart track there is no other way to reach the houses and land of the petitioner. There is gutta on Western side of the cart track. The rest of the physical features are shown in my plan.”

9) The report of the Advocate-Commissioner in O.S No.157 of 2012 which has also been placed on record shows that the Commissioner noted electrical polls in the suit property. He also noted that there is 20 feet broad one way on north western side which is shown as “D” “E”. After six feet cart track way which is shown as “I” “J” in the rough sketch there is a pathway which is

shown as “G” “H” in the rough sketch. The said way is newly reclaimed. There is no division in Sy.No.88/ 17A an extent of Ac.0.78 ½ cents and Sy.No.88/ 17B an extent of Ac.0.78 ½ cents as per original F.M.B. There is no cart track way path way as per original F.M.B.

10) A perusal of the reports of the two advocate-commissioners clearly indicates existence of cart track. Though it is said that as per original F.M.B. there is no cart track, the report of the advocate-commissioner in O.S.No.156 of 2012 categorically refers to the existence of a cart track passing through land in Sy.No.88/ 7. The said advocate-commissioner report came to be marked as Ex.C1. The second advocate-commissioner report relates to O.S.No.157 of 2012, but a reading of the said report also refers to existence of a cart track which is marked as “I”, “J” in the rough sketch. Therefore, the finding given by the appellate Court with regard to non-existence of the cart track *prima facie* appears to be incorrect.

11) For the aforesaid reasons, the order under challenge is set aside and the Civil Revision Petition is allowed restraining the defendants, their men, followers or any body on their behalf from in any way interfering with the suit schedule cart track. Having regard to the facts and circumstances of the case and uninfluenced by the findings given, the trial Court is directed to dispose of O.S.No.156 of 2012 as early as possible, preferably,

within a period of three to six months from the date of receipt of a copy of the order.

12) There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.12.2016
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