

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

CIVIL REVISION PETITION No.4412 of 2016

Between:

Kukkala Venkateswaramma @ Venkata Seshamma

....Petitioner

and

Munnam Rama Krishna Reddy and another.

....Respondents

JUDGMENT PRONOUNCED ON : 28.10.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ CIVIL REVISION PETITION No.4412 of 2016

% 28.10.2016

Kukkala Venkateswaramma @ Venkata Seshamma

...Petitioner

vs.

\$ Munnam Rama Krishna Reddy and another.

... Respondents

!Counsel for the Petitioner : Sri Naga Praveen Vankayalapati

^Counsel for the Respondents : Sri Subba Rao Korrapati

<Gist :

>Head Note :

? Cases referred

1. (1996) 3 SCC 289
2. 2004 (3) ALD 874
3. 2004 (6) ALT 565
4. 2010 (3) ALT 817
5. 2013 (1) ALD 207 : (2012) 6 ALT 636



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.4412 of 2016

ORDER:

The petitioner is the plaintiff in O.S.No.102 of 2016 on the file of the learned Principal Junior Civil Judge, Chirala, Prakasam District. She filed the said suit seeking permanent injunction restraining the defendants from trespassing and dispossessing the plaintiff from the plaint schedule property of an extent of Ac.0.59 cents of land situated in Survey No.348/6 of Rajubangarupalem Village, Hamlet of Chinaganjam Mandal in Prakasam District. A written statement was filed by the defendants. The petitioner filed I.A.No.607 of 2016 seeking temporary injunction. When the said application was pending, she also filed I.A.No.1477 of 2016 seeking a direction to Tahsildar, Chinaganjam, to send for D.K Register for the years 2000-2001 and 2001-2002 relating to the plaint schedule land. A counter affidavit was filed and when the said application was dismissed by order dated 02.09.2016, the present Civil Revision Petition is filed.

The case of the petitioner as set out in the plaint is that the plaint schedule property was given to her as *pasupu kunkuma* at the time of her marriage, which took place about 35 years back and since then she has been in continuous possession and enjoyment of the said land. The name of the plaintiff was mutated in the revenue records and she was given

pattadar pass books and title deeds. Her name is being recorded as enjoyer of the plaint schedule property in the revenue records. The first defendant is the brother of the plaintiff and the second defendant is his son in law. Both of them developed an evil idea to grab the plaint schedule property as the plaintiff has no male help since her husband died and she is working as office subordinate in Veterinary Hospital of Chinaganjam. The defendants were proclaiming in the village that they will not permit her to cultivate the plaint schedule land as it belonged to the father of the first defendant. The defendants, with the support of some anti-social elements, are trying to trespass into the plaint schedule land.

A written statement was filed by the first defendant denying the plaint allegations. He stated that he is the absolute owner of the said property since a DK patta was granted in his favour in the year 2001 recognizing his long possession and enjoyment. A copy of the same was filed along with the written statement. Previously the father of the first defendant – Poli Reddy, had been in possession and enjoyment of the plaint schedule property during his lifetime and he died 15 years back. The first defendant has been raising leafy vegetables and vegetables in the plaint schedule property along with some Eucalyptus trees. The Mandal Revenue Officer granted pattadar pass books and title deeds in his favour. The plaintiff has got political influence and continuously threatening the first defendant. The title deeds and pattadar pass books in favour of

the plaintiff were invented documents and pressed into service for the purpose of the present suit. The plaintiff, under the guise of the temporary injunction orders, raided on the property of the first defendant on 11.04.2016 at 11.00 pm and committed theft of electricity meter, wire and caused loss to the property of the first defendant. The first defendant gave a complaint to the Chinaganjam Police Station on 12.04.2016 and the same is under enquiry.

When the application for direction to the Tahsildar, Chinaganjam, was filed, as aforesaid, the trial Court dismissed the application by holding as follows:

“...Both parties have marked their respective documents Exs.P1 to P6 and Exs.R1 to R5. The alleged D.K.Patta produced by respondent No.1 also got marked. The petitioner disputed about the said D.K.Patta stands in the name of respondent No.1. The attempt of petitioner to get D.K.Register to establish that no such D.K.Patta was granted to respondent No.1. Now I.A.607/2016 filed for bare temporary injunction, hence, the petitioner has to establish her prima facie possession over schedule property as on the date of filing suit and also to establish that irreparable loss would be caused her, if injunction not granted. Even if such document is brought before this court and found absence of such D-form entry in favour of respondent No.1 that would no way established the possession of petitioner at this stage. The petitioner at the stage has to rely upon her own documents which establish prima facie case to go for trial but not on the documents filed by respondent No.1. The respondents claimed their possession over schedule property based on such D-form patta. Whether such D-form patta filed is fabricated document or genuine document can be proved in due course of trial after adducing evidence by the parties to the suit. Hence, at this juncture, directions to Tahsildar send for D.K.Register is unwarranted. The petitioner with a view to procrastinate and dodge the matter filed this kind of application. Moreover Order 16 Rule 1 CPC made it clear that such issuance of summons to witness for production of documents be ordered after settlement of issues. In the present case so far, no issues settled. Hence, this petition is prematured one. Hence, this petition is devoid of merits. Hence, dismissed.”

It appears that the plaintiff filed I.A.No.1477 of 2016 after the respondents filed their counter affidavit in the application for temporary injunction and when the application for temporary injunction is coming up for disposal after hearing both the parties.

Learned Counsel for the petitioner submits that Section 141 of the Code of Civil Procedure provides that the procedure provided in the Code with regard to suits shall be followed in all proceedings, and the expression “proceedings” includes the proceedings under Order XVI Rule 1 and hence the trial Court erred in dismissing the application. He placed reliance on **S.Noordeen v. V.S.Tiru Venkita Reddiar¹, Asia Vision Entertainment Limited v. Suresh Productions², Yale Malleshappa v. Chinna Hotur Bale Eramma³ and L.Venkata Krishna Reddy v. M.Anjinappa (Died)⁴.**

Learned Counsel for the respondents, on the other hand, by placing reliance on **Shaik Ujauddin v. Veerabhadra Uma Devi⁵** submitted that though the wording of Section 141 of CPC provides for application of the provisions of the Code to the interlocutory applications also, the application filed by the petitioner even before disposal of interlocutory application for temporary injunction in a suit for permanent injunction is not warranted and the order of the trial Court is sustainable.

¹ (1996) 3 SCC 289

² 2004 (3) ALD 874

³ 2004 (6) ALT 565

⁴ 2010 (3) ALT 817

⁵ 2013 (1) ALD 207 : (2012) 6 ALT 636

In the light of the above facts and submissions of the learned Counsel, it has to be seen whether the order of the lower Court is correct or not.

The suit was filed for permanent injunction and an *ex parte* ad interim injunction was granted in favour of the plaintiff/petitioner. Both the parties, plaintiff and the first defendant, are claiming their right and title to the property on the basis of the documents issued in their favour by the revenue officers. It is strange that the Tahsildar issued pattadar pass books and title deeds in favour of both the parties. But, it is not clear with regard to the period when the documents were issued and who can claim prior possession. Be that as it may, the point is whether a party to the proceedings can invoke the jurisdiction of the Court in respect of various steps envisaged for disposal of the suit even before framing issues.

Section 141 of CPC reads as follows:

“141. Miscellaneous proceedings:- The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation:-In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.”

Order XVI Rule 1 of CPC, on which reliance was placed by the trial Court, reads as follows:

“SUMMONING AND ATTENDANCE OF WITNESSES:

- 1. List of witnesses and summons to witnesses:-**
- (1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the

issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)."

The Supreme Court in **S.Noordeen's** case (supra) held that the proceedings envisaged for adjudication under Order XXXVIII Rule 8 read with Order XXI Rule 58, is a civil proceeding and it becomes part of the decree. But the facts of the said case are not applicable to the present case. Section 141 of CPC came up for consideration in **Asia Vision Entertainment Limited's** case (supra) and this Court held that by virtue of the amendment made by Act 4 of 1976, the applications under Order XXXIX of CPC fall within the scope of Section 141. The relevant observations made by this Court are as follows:

"10. The C.P.C. does not stipulate any special procedure to be followed in respect of interlocutory or miscellaneous proceedings. Section 141 thereof, mandates that the procedure provided for in the Code, in regard to suit, shall be followed in all the proceedings in any Civil Court to the extent possible. Till the year 1977, there used to be uncertainty as to whether the expression "proceedings" referred to under Section 141 would take in

its fold the interlocutory applications. Through an Act 4 of 1976, the Parliament added an explanation to section 141, which is to the effect that the expression "proceeding" shall include those under Order IX C.P.C. The proceedings under Article 226 were excluded, because they are governed by the writ rules, framed by the respective High Courts. The proceedings under Order IX, are referred to, almost as an illustration. Reference to it is not exclusive, but inclusive. Therefore, applications under order 39 C.P.C, fall within the scope of section 141. Even before Section 141 was amended, the Nagpur High Court held way back in the year 1933, that Section 141 CPC covers the proceedings under Order 39, rule 2. (See AIR 1933 Nagpur page 62)

11. The purport of Section 141 cannot be said to be to the extent that every interlocutory application shall be decided as though it is a suit. The indication is that the procedure in regard to suit shall be followed "as far as it can be made applicable". Instances are not lacking, where oral evidence is recorded, while deciding interlocutory applications, such as those under Order 22, or under Order 39 etc. Confining the evidence, to the form of affidavits at the interlocutory stages is mostly as a measure of convenience. With the recent amendment to C.P.C., the evidence through affidavits almost stands equated to that of oral evidence. The broad principles such as reference to pleadings, evidence, appreciation of the contentions, application of the provisions of law, need to be followed even while disposing of interlocutory applications.

12. For example, the nature of the assignment of copyright, the duration of assignment, governed by provisions of sections 18 and 19 of the Copyright Act, had an important bearing on the matter. Adjudication of the I.A., on a consideration of such provisions, would go a very long way, in deciding the rights of the parties more effectively. The purpose underlying such a course of action is to ensure that the matter receives proper appreciation, be it, on facts or in law, and the parties concerned, or the appellate Court would be in a position to appreciate as to how the matter was analyzed by the Trial Court.

13. Though the relevancy and admissibility of documents is to be considered at the trial of the suit, the importance and relevance of documents at the interlocutory stages cannot be ignored. Discussion with reference to the documents relied upon by the parties would enable the Courts to arrive at an objective and effective conclusion. Omission to refer to any of the documents relied upon by the parties would have its own impact. Unless all the documents are referred to in the index, it would be too difficult to discern as to whether the parties have filed such documents, and whether such documents were relied upon at all. Therefore, the

grievance of the Defendants 1 and 2, that omission to refer to the documents in the appendix of evidence and absence of discussion of the matter with reference to relevant provisions has resulted in failure of justice to them, cannot be brushed aside.”

In **Yale Malleshappa**’s case (supra) this Court considered somewhat identical situation. In the said case the suit was filed for declaration of title and permanent injunction and when an enquiry for temporary injunction was pending, an interlocutory application was filed to summon the Mandal Revenue Officer to produce the original Adangal pertaining to the suit schedule land. The said application was allowed. When it was challenged before this Court by the defendants, this Court considered Order XVI Rule 1 read with Sections 141 and 151 of CPC. This Court noticed that both the parties before the trial Court were relying on two sets of documents issued by the same Village Administrative Officer and only one set can be proved. This Court observed that even if a finding is recorded on the basis of the documents filed by a party in an interlocutory application, it will not be final. This Court held as follows:

“It is settled proposition of law that, at times, technicalities have no place in the adjudicatory process. As already pointed out, there is no provision covering the present controversial and factual situation. In such an event, it is for the Court below to invoke its inherent jurisdiction conferred under Section 151 of the Code of Civil Procedure in order to meet the ends of justice or to prevent the abuse of process of law.

In the instant case, since there are obviously two sets of documents, said to have been issued by the very same Village administrative Officer, in my considered view, it is always open to the Court below to decide, at the threshold itself as to which set of documents are *prima facie* true.”

In **L.Venkata Krishna Reddy**’s case (supra) it was held that the application filed under Order IX Rule 9 for restoration

of the interlocutory application which was dismissed for default was maintainable.

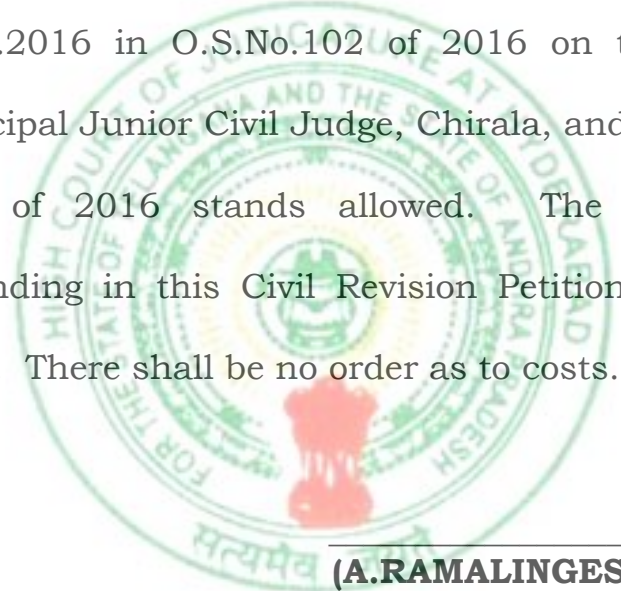
In the instant case also there are two sets of documents filed by the plaintiff and defendants claiming title to the property and issued by the competent authority. Though the enquiry is at the interlocutory stage, if the application is not considered on the basis of proper evidence, serious prejudice would be caused to the parties. Section 141 of the Code and Order XVI have to be reconciled.

In view of the conflicting judgments of various High Courts, Section 141 of the Code of Civil Procedure was amended by Amendment Act 1976 by inserting an explanation to the said Section. The explanation made it clear that the expression “proceedings” indicated in the main Section includes proceedings under Order IX, but excluded the proceedings under Article 226 of the Constitution. A careful reading of the Section makes it clear that the procedure provided in the Code with regard to the suit shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. When the said Section is read along with the explanation it makes it clear that the procedure followed in the suit shall be followed in respect of the interlocutory applications also. But, the provisions in the Code contain both substantive and procedural rights and what is made applicable is only the matters dealing with procedure. The right of appeal, revision or

review are substantive rights and not matter of procedure and hence they cannot be claimed under Section 141. The expression “as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction” makes it clear that the Court has to exercise its discretion in applying the rule of procedure. It depends on the nature of the proceedings and right to such procedure claimed in the said proceedings.

In view of the same, the Civil Revision Petition is allowed by setting aside the order of dismissal of I.A.No.1477 of 2016, dated 02.09.2016 in O.S.No.102 of 2016 on the file of the learned Principal Junior Civil Judge, Chirala, and consequently, I.A.No.1477 of 2016 stands allowed. The miscellaneous petitions pending in this Civil Revision Petition, if any, shall stand closed. There shall be no order as to costs.

28.10.2016
vs

The seal of the High Court of Andhra Pradesh is visible in the background, featuring a central emblem with a lamp and text in English and Odia. Below the seal, the signature of the judge is written in bold, black, uppercase letters.
(A.RAMALINGESWARA RAO, J)