

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL REVISION PETITION No.3219 of 2016

ORDER:

This civil revision petition is filed against the order dated 06.06.2016 in CMA No.7 of 2015 on the file of the Principal Senior Civil Judge, Mancherial, Adilabad District, by and under which, the learned Judge dismissed the appeal, while confirming the order of the trial Court.

2. Heard the learned counsel appearing for the petitioners/defendants and the learned counsel appearing for the respondent/plaintiff.

3. The parties are referred to as arrayed before the trial Court. The petitioners are the defendants and the respondent is the plaintiff in O.S.No.152 of 2014 on the file of the Principal Junior Civil Judge, Mancherial. The plaintiff filed the said suit against the defendants seeking perpetual injunction in respect of the suit schedule property. Along with the suit, the plaintiff filed I.A.No.881/2014 under Order 39 Rules 1 & 2 CPC seeking temporary injunction. The subject property is an extent of Ac.3.00 gts situated in Sy.No.754/E of Garmilla village of Mancherial Mandal. The I.A was filed by one Sher Bharathi Murthy, who is the General Power of Attorney of the plaintiff.

4. The case of the plaintiff is that she is the absolute owner of the schedule property having purchased the same from S.Bharathi Murthy under a registered sale deed dated 06.04.2004, who purchased the same from Thoutam Lingaiah and his wife Buchamma on 15.09.1983. The name of the plaintiff was entered into ROR proceedings dated 31.03.1994. In the meanwhile, one P.Prabhakar Rao has filed a suit for specific

performance of contract against the plaintiff and S.Bharathi Murthy on the file of the Senior Civil Judge, Asifabad in O.S.No.2/2004 and the same has been transferred to the trial Court and renumbered as O.S.No.235/2009. The 1st defendant has put up a claim that she inherited the property of Regalla Purushotham. The said Regalla Purushotham and his wife have no issues and they adopted one R.Sudhakar as their son, who married the 1st defendant. The 1st defendant got mutated her name in the revenue records claiming herself as the owner and possessor of the property in question, even though she has no right over the disputed land.

5. The defendants filed counter stating that one Purushotham was the original owner of the property in question and he died leaving behind his wife R.Prabhavathi and husband of the 1st defendant who had inherited the property in question. The lands were mutated in the name of R.Prabhavathi. The said Prabhavathi used to reside along with her adopted son, i.e. the husband of the 1st defendant at Chennur and she became mentally retarded and left the house. The husband of the 1st defendant has obtained death certificate from Gram Panchayat and the disputed land was mutated in the name of the 1st defendant in the revenue records and therefore, the plaintiff has no right over the property in question.

6. Before the trial Court in I.A.No.881/2014 on behalf of the plaintiff Exs.P1 to P8 are marked, and on behalf of the defendants Exs.R1 to R21 are marked and no oral evidence was let in on either side.

7. The trial Court upon hearing both sides and having considered the documentary evidence adduced on either side, allowed the I.A,

restraining the defendants from interfering with the possession of the plaintiff over the schedule property.

8. Questioning the said order, the defendants preferred appeal in CMA.No.7/2015 before the Court below. The appellate court, upon re-appreciation of the entire record and documentary evidence, dismissed the appeal while confirming the order of the trial Court. Aggrieved by the same, the present civil revision petition is filed.

9. The point for consideration is as to whether the injunction granted in favour of the respondent/plaintiff pending disposal of the suit by the Court of the Junior Civil Judge, Mancherial and confirmed by the appellate Court in C.M.A.No.7 of 2015 on the file of the Senior Civil Judge, Mancherial, is liable to be interfered with or whether the injunction so granted is liable to be allowed to continue till the disposal of the suit, which is filed for perpetual injunction?

10. One Regulla Purushotham was the original owner and possessor of vast extents of land in Garimella village in Sy.Nos.754 and 763. He died leaving behind his wife Prabhavathi. The couple had no children. The present suit is only in respect of part of the lands of Purushotham namely an extent of Ac.3-00 in Sy.No.754/E. According to the respondent/plaintiff, from Prabhavathi the suit schedule land was purchased under an un-registered instrument on 06.08.1969 by one Lingaiah and thereafter on 24.05.1984, the land was purchased by Brahma Chary and Vasanta. The plaintiff purchased the said land under a registered instrument-Ex.P.2 dated 06.04.2004. In between the purchase by the plaintiff and Brahma Chary & Vasanta, the suit land was purchased by one Bharathi Murthy and from the said Bharathi Murthy under

registered sale deed – Ex.P.2 dated 06.04.2004 the plaintiff purchased the suit schedule lands. The name of the plaintiff, as also her vendor, were recorded in the revenue records by the MRO.

11. It is the contention of the plaintiff that ever since 1983-84 the vendors of the plaintiff and thereafter the plaintiff had been in continuous possession of the suit schedule lands to the knowledge of one and all. However, subsequently, in the year 2014, the defendants tried to interfere with her possession and hence she filed the suit for perpetual injunction and pending the same, I.A.No.181 of 2014 is filed for interim injunction.

12. On the other hand, the contention of the defendants is that after the death of Purushotham, his wife Prabhavathi became the owner and possessor of the properties of Purushotham and some times thereafter, due to mental sickness, Prabhavathi left the village and her whereabouts are not known. One Sudhakar, who is the husband of the 1st defendant, was the natural son of the brother of Purushotham and since Purushotham and Prabhavathi had no children, the couple adopted him and since Sudhakar was staying at Chennur, he was not aware of the proceedings mutating the name of the plaintiff or her vendors in the revenue records and on coming to know thereof in the year 2004 he filed an appeal No.G2285/2005 before the R.D.O under Section 5-A of A.P.Rights in Land and Pattadar Pass Books Act, 1971 for cancelling the mutation proceedings issued by the Tahasildar. The RDO entertained the application though filed more than 12 years after the limitation period expired and passed the order setting aside the mutation in favour of the plaintiff and her vendors vide Proceedings dated 07.02.2014. The matter was carried to the High Court by way of writ petition and the said writ

petition was allowed vide orders dated 30.10.2012 in W.P.No.24352 of 2009 and the Orders of the RDO were set aside and the matter was remanded back to the Tahasildar for passing appropriate orders after adjudicating the question about the maintainability of the appeal in view of the delay. Since the order of the RDO which was in favour of the husband of the 1st defendant was set aside, the 1st defendant preferred Writ Appeal bearing No. WA.No.1660 of 2013 and by Order dated 27.09.2013 the Division Bench of our High Court confirmed the order of the learned single Judge remanding the matter back to the RDO but however clarified that if the RDO comes to a conclusion that the appeal is maintainable, his previous order setting aside the mutation proceedings of the Tahasildar shall automatically stands restored.

13. Thereafter, the RDO took up the enquiry once again and after taking into consideration the question of limitation and maintainability has reiterated the previous order setting aside the mutation proceedings and granting succession to the 1st defendant who succeeded Sudhakar he having died in the meantime. Against the orders of the RDO, Ex.R.5, dated 07.02.2014, the plaintiff preferred a revision before the Joint Collector which is said to be pending. Therefore, the orders of the RDO have not become final and they are subject to the orders of the revisional authorities where the matter is pending.

14. The result of the foregoing discussion is that there is a serious dispute about the title over the suit schedule properties. The fact that there are instruments, both registered and unregistered, in respect of the suit schedule properties originally executed by Prabhavathi and thereafter by the subsequent purchasers is not in dispute. The suit property

changed several hands right from 1969. The unregistered agreement of sale originally executed by Prabhavathi on 06.08.1969 has been produced and marked as Ex.R.20. It is said to be an agreement of sale and thereafter the agreement holder thereunder sold the land to other persons which has been referred to above. Ultimately, it is the plaintiff who purchased the suit schedule lands under registered instrument – Ex.P.2 dated 06.04.2004. More than ten years thereafter, Sudhakar and his wife-D.1 claiming to be the legal heirs of Prabhavathi started claiming title over the suit schedule lands. It may be stated here that Sudhakar claims to be the adopted son of Purushotham and Prabhavathi. There is material on record which shows that when Sudhakar has applied for grant of succession, after the death of Purushotham and disappearance of Prabhavathi, on 25.10.2004 in file No.B/7833/04, the Mandal Revenue Inspector (MRI) was requested to conduct the enquiry into the matter and submit the report. The MRI by his report dated 06.11.2004 in file No.MRI-I/2004 submitted to the MRO, Mancherla, stated that Purushotham and Prabhavathi adopted one Pushpa, who is the natural daughter of brother of Purushotham and the said Pushpa is living with her husband at Hanamkonda. It is also on record that the MRI in his report observed that the said Pushpa gave a sworn statement before him that she has no objection if the property standing in the name of Prabhavathi is mutated in the name of Sudhakar, who is her natural brother and none other than the son of brother of Purushotham. In view of this documentary evidence, the contention of the first defendant that her husband Sudhakar was the adopted son of Purushotham and Prabhavathi becomes doubtful and the same is falsified by the report of the MRI

wherein it is clearly stated that it is Pushpa, the sister of Sudhakar, was adopted but not Sudhakar, the husband of the 1st defendant. The first defendant is claiming suit schedule properties only by way of succession but not otherwise. *Prima facie* when Purushotham and Prabhavathi had no issues and they left behind, Sudhakar and Pushpa being the son and daughter of brother of Purushotham, the succession if any devolves on those persons but not exclusively on Sudhakar as claimed by his wife – the 1st defendant. But for deriving the right by way of succession Sudhakar or for that matter Pushpa had no rights over the properties left behind by Purushotham and Prabhavathi which according to the plaintiff were already sold during the life time of Prabhavathi herself. These are the contentious issues which have to be gone into in a comprehensive suit or proceedings or at best in the main suit which is pending trial.

15. The suit is for perpetual injunction and pending the same, the application is filed for interim injunction. While adjudicating the application such as the one in hand under Order 39 Rule 1 CPC, the title over the properties will not be as significant as the question of determining the possession of the properties on the date when the suit came to be filed. While granting injunction the trinity factors namely *prima facie case*, the balance of convenience, and irreparable loss need to be considered. In the instant case, the two Courts below viz., the Junior Civil Judge, Mancherial and the appellate Court namely the Senior Civil Judge, Mancherial, have extensively discussed about each and every document that are produced and came to a *prima facie* conclusion that the plaintiff has made out her case for grant of injunction pending disposal of the suit and accordingly granted the same. When both the

Courts below have concurrently found that it is a fit case for granting injunction pending disposal of the suit, it is very difficult to interfere with the said concurrent findings and the same can be done only if it is shown to the revisional Court that such findings are perverse or arbitrary.

16. In the instant case, having carefully gone through the entire material on record, I see no reason to hold that the said findings of fact recorded by both the Courts below suffer from any perversity or arbitrariness.

17. It may be reiterated that the plaintiff and her vendors claim possession over the suit schedule lands right from the year 1969, firstly under unregistered instrument and subsequently under registered document. The plaintiff has purchased the suit schedule lands under registered document as long back as in the year 2004. The said sale deed was not challenged for more than ten years. Subsequently also the person who claims to have succeeded to the properties of Prabhavathi has not taken any steps to set aside the sale deed in favour of the plaintiff but instead have approached the RDO to set aside the proceedings mutating the name of the plaintiff and her vendors in the revenue records. As already observed, the appeal of Sudhakar though filed more than twelve years after expiry of limitation was entertained by the RDO, without, however, touching upon the question of the maintainability of the appeal. When that was challenged by the plaintiff by way of writ petition, the learned single Judge has set aside the orders of the RDO and remanded the matter back to the RDO with a direction to firstly consider the question of maintainability of the appeal beyond the period of limitation. The Division Bench of our High Court also confirmed the said finding of

the learned Single Judge by clarifying that if the RDO finds the appeal to be within limitation, his previous order setting aside the mutation proceedings stand maintained and the aggrieved persons need to work out their remedies. After the RDO passed the order afresh on 07.02.2014, the plaintiff said to have carried the matter by way of revision before the Joint Collector, which is pending.

18. Learned Counsel appearing for the revision petitioners/defendants submits that the findings of both the Courts below are contrary to the evidence on record and run contra to the orders of the High Court in Writ Appeal No1660/13, dated 07.09.2013. For this submission, there is no substance for the reason that the Division Bench of our High Court did not say that the order of the RDO will be conclusive one and as a matter of fact, the parties were directed to avail the remedies that are available to them. Learned Counsel has relied upon the following decisions, which, however, have no direct relevance to the point in controversy as at present:-

“PATINHARE PURAYIL NABEESUMMA v. MINİYATAN ZACHARIAS (2008) 5 SCC 25); KRI SHNA RA MAHALE v. SHOBHA VENKAT RAO (1989) 4 SCC 131; NAGAR PALIKA v. JAGAT SINGH (1995) 3 SCC 426; M.C.CHOCKALINGAM v. V.MANICKAVASAGAM (1974) 1 SCC 48; RAME GOWDA v. M.VARADAPPA NAIDU (2004(2) ALD 31 (SC); M.B.RATNAM v. REVENUE DIVISIONAL OFFICER, R.R.DIST (2003 (1) ALT 688 (DB); T.SANTOSH KUMAR v. JOINT COLLECTOR, MAHABUBNAGAR (2014 (6) ALT 51); PATINHARE PURAYIL NABEESUMMA v. MINİYATAN ZACHARIAS (AIR 2008 S.C., 1456); STATE OF H.P. v. KESHAV RAM AND OTHERS (AIR

1997 S.C., 2181); and V.GOUTHAM RAO v. R.D.O., JAGTIAL AND ANOTHER (2003 AIHC 1705 – W.P.No.16922 of 2002)”.

19. It may be recalled that the suit is still pending trial and what is all that is required to be adjudicated in the revision is as to whether the interim order granting injunction in favour of the plaintiff pending disposal of the suit, as confirmed by the first appellate Court in C.M.A.No.7 of 2015, needs to be revised on the ground that it suffers from any perversity or arbitrariness.

20. Upon careful perusal of the entire material on record and the Judgments of the Courts below, I do not see any perversity or arbitrariness in the orders passed by both the Courts below and as a matter of fact they are based on the legally permissible documents and the presumptions that are to be deduced for determining the possession over the suit schedule lands on the date of the suit for grant of injunction pending disposal of the suit. Merely because the RDO has set aside the order of the Tahasildar mutating the suit schedule lands in favour of the plaintiff or her vendors, which is subject matter of a further revision before the Joint Collector, it cannot be said that the plaintiff has been dispossessed from the lands of which she was put in possession in pursuance to the registered sale deed, dated 06.04.2004. The defendants nowhere have specifically contend that it is they who have been in possession of the suit schedule lands ever since the disappearance of Prabhavathi who is said to be the adoptive mother of Sudhakar which question itself remains to be adjudicated in an appropriate Forum for the reason that the revenue records show that it is Pushpa who was adopted by Purushotham and Prabhavathi but not Sudhakar and the said Pushpa

gave sworn statement before the revenue authorities expressing no objection for mutation the name of her brother Sudhakar in the place of Prabhavathi in respect of the lands left behind by Prabhavati.

21. In view of the foregoing discussion, I see no reason to interfere with the orders of both the Courts below granting injunction in favour of the respondent/plaintiff and there are no merits in the revision and the same is liable to be dismissed.

22. In the result, the Civil Revision Petition is dismissed without costs. Learned Junior Civil Judge, Mancherial, is directed to dispose of O.S.No.152 of 2014, in accordance with law, within a period of six months from the date of receipt of a copy of this order, without being influenced by any observations made hereinabove.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 14.10.2016
Dsr/Smr

M.S.K.JAI SWAL,J

