

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2402 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 29.02.2016, in CMA No.95 of 2012 passed by the III Additional Chief Judge, City Civil Court, Hyderabad, whereby granting temporary injunction against the defendant, who is the second respondent herein, from interfering with the peaceful possession and enjoyment of the schedule property.

02. The revision petitioner is the third party, who filed the revision petition after obtaining leave of this Court following the Judgment of this Court in **IMMADI CHETTY RAVINDRA v. KAMAKSHI DEVI SAMETHA SRI RAMALINGESWARA SWAMIVARI DEVASTHANAM, RAMATHEERTHAM, RAMATHEERTHAM VILLAGE, VIDAVALURU MANDAL, NELLORE DISTRICT AND ANOTHER¹**, and challenged the Order on various grounds.

03. The first respondent herein filed a petition in I.A. No.554 of 2011 before the trial court, under Rules 1 and 2 of Order XXXIX of CPC for grant of temporary injunction during pendency of the suit and the suit against Municipal Corporation represented by its Commissioner alleging that he is absolute owner and possessor of the premises bearing Municipal No.8-1-523/301/A admeasuring 278.05 square yards situated at Brindavan Colony, Toli Chowki, Hyderabad, having purchased

¹ 2009(2) ALD 601

- 2 -

the same from one Punna Satyanarayana Babu, S/o.P.Veeraiah, under registered agreement of sale with possession-cum-general power of attorney dated 13.07.2010 bearing document No.2524 of 2010. It is further contended that on the date of execution of agreement of sale-cum-general power of attorney, delivered the vacant and peaceful possession of the suit premises to the respondent herein, thereupon he constructed a boundary wall and a Watchman was appointed to watch and protect the premises from illegal encroachment by unsocial elements. It is further contended that the name of the first respondent herein was also mutated in the revenue records and assessment register and notice dated 01.07.2011 was issued to him complaining that he raised unauthorized construction without any prior permission from the Office. He also applied for electricity connection from APCPDCL authorities etc., and thus he is in possession and enjoyment of the property. The Municipal Corporation-second respondent herein contemplated to take action in pursuance of the notice issued under Section 452(2) of the Hyderabad Municipal Corporation Act, 1955. Hence, the first respondent filed the petition before the trial court for grant of temporary injunction.

04. The respondent in the petition, who is the second respondent herein, failed to file counter.

05. The trial court granted temporary injunction restraining the second respondent herein-Municipal Corporation and its officials from interfering with the peaceful possession

and enjoyment of the schedule property by the first respondent till disposal of the suit.

06. Aggrieved by the Decree and Decreetal Order passed by the trial court, Brindavan Colony Welfare Association registered under Societies Registration Act, who is the revision petitioner herein, preferred Civil Miscellaneous Appeal in CMA No.95 of 2012 before the III Additional Chief Judge, City Civil Court at Hyderabad, and it was dismissed affirming the Order passed by the trial court.

07. Aggrieved thereby, the present revision petition is filed on various grounds.

08. During hearing, M/s. Mohd. Adnan, learned counsel appearing for the revision petitioner contended that in view of the Order in I.A. No.401 of 2012 in I.A. No.526 of 2011 in O.S. No.1850 of 2011 the first respondent before this court is not in a possession of the property and the Order passed by the Court dated 08.02.2013 has attained finality, thereby the first respondent herein has no locus standi. The Municipal Corporation-second respondent herein circumventing the provisions, though the revision petitioner is in possession of the property issued notices and did not contest the petition and drawn the attention of this Court to the Order in I.A. No.401 of 2012 in I.A. No.526 of 2011 in O.S. No.1850 of 2011.

09. Whereas Smt. Naseeb Afshan, learned counsel for the first respondent, supported the Order passed by the trial court and the appellate court in all respects, while contending that his dispossession was subsequent to passing of Order by the trial

court and in such case, the injunction order cannot be vacated and placed reliance on several Judgments of the Apex Court in **DELHI DEVELOPMENT AUTHORITY v. SKIPPER CONSTRUCTION CO. (P) LTD AND ANOTHER², CHENI CHENCHIAIAH AND SHAIK ALLI SAHEB AND OTHERS³, S. PRABHAVATHI V. ROHINI KILARU AND ANOTHER⁴, THE STATE OF BIHAR V. USHA DEVI AND ANOTHER⁵** and the Judgments of this Court and other High Courts in **VIDYA CHARAN SHUKLA v.TAMIL NADU OLYMPIC ASSICATION AND ANOTHER⁶ MIR BAZLAY ALI v. JAGIRDAR NIRKHY MIR MAHAMMAD ALI (DECEASED BY LR) AND OTHERS⁷** in support of her contention.

10. The only question before this court is, whether the Order passed by the trial Court I.A. No.554 of 2011 in O.S. No.2484 of 2011 and affirmed by the appellate court and in CMA No.95 of 2012 is in accordance with law?

11. The first respondent herein filed a petition in I.A. No.554 of 2011 under Rules 1 and 2 of Order XXXIX of CPC for temporary injunction during pendency of the suit alleging that the he is in possession and enjoyment of the schedule property, since the second respondent-Municipal Corporation issued a notice under Sections 452 and 636 of the Hyderabad Municipal Corporation Act, 1955 complaining violation of building rules. Hence he was forced to approach the Court for permanent

² (196) 4 SCC 622

³ 1993(2) ALT 517

⁴ 206(5) ALD 606

⁵ AIR 1956 PATNA 455 (VOL.43 C.110 NOV.) (1)

⁶ AIR 1991 MADRAS 323

⁷ AIR 2006 AP 131

injunction and obtained interim injunction during pendency of the suit.

12. For grant of temporary injunction or interim injunction during pendency of the suit, the petitioner has to establish three requirements, which are sine qua non, they are prima facie case, balance of convenience and irreparable loss or injury that would be sustained by the petitioner in case no injunction is granted.

13. The trial court, in second sentence at page 4 of the Order concluded that based on the documents it can be said that the petitioner has been in possession and enjoyment of the property by paying taxes to the second respondent-Corporation “prima facie” and at the end of the same paragraph the trial court observed that the petitioner would be put to irreparable loss or injury in case no injunction is granted. The appellate court just affirmed the order without assigning any reason passed by the trial court.

14. Prima facie possession is different from prima facie case and both cannot be confused. Prima facie case means a case go for trial or a arguable case. But the trial court did not record that the plaintiff has got prima facie case, but recorded a finding that the first respondent herein is only in possession of the property prima facie, but at the end of the same paragraph held that one of the requirements i.e. sustaining irreparable injury or loss was held in favour of the first respondent. If for any reason the court finds that any of three requirements are not established by the petitioner, the Court cannot grant a

- 6 -

temporary injunction. But strangely, the appellate court also did not record any finding. Therefore, it is appropriate to remand the matter setting aside the order under challenge, while directing the trial court to decide whether the petitioner established three requirements for grant of temporary injunction during pendency of the suit afresh based on the material available on record.

15. The revision petitioner also filed a petition under Rule 27 of Order XLI of CPC to receive document as additional evidence, however, I find that it is a fit case to direct the revision petitioner to file those documents before the trial court after obtaining leave of the Court as per procedure and on such production, the trial court is directed to consider the documents produced before the Court and pass appropriate Orders with reference to the requirements for grant of temporary injunction.

16. With the above direction, the Civil revision petition is allowed setting aside the Order in CMA No.95 of 2012 while remanding the petition in I.A. No.554 of 2011 in O.S. No.2484 of 2011 to the trial court to decide the matter afresh by recording specific finding as to three requirements for grant of temporary injunction.

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

M. SATYANARAYANA MURTHY, J

Date: 15.09.2016
BV