

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION Nos.4235 and 4274 of 2016

COMMON ORDER:

Civil Revision Petition No.4235 of 2016 is filed by the petitioners-plaintiffs challenging the order dated 19.1.2016 in I.A. No.88 of 2014 in O.S. No.135 of 2014 on the file of the Court of the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, Bhadrachalam (the Mobile Court), wherein and whereby the *ad interim* injunction granted on 10.6.2014 restraining the respondents-defendants from interfering with the peaceful possession and enjoyment of the suit schedule land by the petitioner, was set aside, and the petitioners and respondents were directed to maintain *status quo* as on the date of filing of the suit.

2. Civil Revision Petition No.4274 of 2016 is filed by the petitioners-plaintiffs challenging the order dated 19.1.2016 in I.A. No.122 of 2014 in I.A. No.88 of 2014 in O.S. No.135 of 2014 on the file of the Mobile Court, wherein and whereby the petition filed for grant of police protection was dismissed.

3. Since both the impugned orders arose out of one suit and the parties to both the civil revision petitions are one and the same, this court is inclined to dispose of these two civil revision petitions by this common order.

4. Heard the learned counsel for the petitioners and learned counsel for the respondents.

5. A perusal of the record reveals that the petitioners have filed O.S. No.135 of 2015 on the file of the Mobile Court against the respondents seeking perpetual injunction in respect of different extents of land situated at Wadagudem (Z) Village, Venkatapuram Mandal, Khammam District. The petitioners filed I.A. No.88 of 2014 seeking *ad interim* injunction and the same was granted by the Mobile Court by order dated 10.6.2014. The petitioners also filed I.A. No.122 of 2014 seeking police protection on the ground that the respondents are interfering with the suit schedule property despite the interim order granted by the Mobile Court. The police protection granted *ex parte* on 22.8.2014. While so, the respondents filed I.A. No.307 of 2014 seeking to set aside the *ex parte* order dated 22.8.2014 passed in I.A. No.122 of 2014. After filing the counter by the respondents and hearing the learned counsel for both the parties, the Mobile Court, by common order dated 19.1.2016 dismissed I.A. No.122 of 2014 directing both the parties to maintain *status quo*. The relevant finding reads as, “Hence, the plaintiffs failed to prove their physical possession in the suit land in sy.no.32/5 situated at Wadagudem (Z) village, Venkatapuram Mandal, Khammam District vide the report of the Tahsildar, Venkatapuram in Rc.No.B/200/2014, dated 21.07.2014 at the time of filing of the suit.”. Aggrieved by the said orders, the petitioners filed the two civil revision petitions.

6. At the time of hearing, learned counsel for both the parties, in one voice, submitted that in view of the judgment of this court in **Maloth Veeru @ Heerala v Guguloth Mangi**¹, the matter may be remitted to the Mobile Court. In the said judgment, at paragraph No.3 (of Manupatra), it was held as follows:

3. Be that as it may, from a perusal of the order under revision, I am of the opinion that the lower Court has committed a fundamental error in calling for the report from the Tahsildar and placing reliance on the same. The lower Court is discharging the functions of a Civil Court in the Agency Areas. Placing reliance on a report without summoning its author and examining him is something alien to the procedure before a Civil Court. If the lower Court felt the necessity of eliciting the opinion of the Tahsildar regarding physical possession of the suit property, the appropriate course for it would have been to summon the Tahsildar and examine him as a Court witness. Such a procedure would have ensured that opportunity is given to both the parties to cross-examine such witness. By calling for a report from the Tahsildar and placing reliance thereon, without giving an opportunity to the petitioner to cross-examine tahsilder the lower Court has committed a serious jurisdictional error. It has also committed another serious error in rendering a prima facie opinion that No.3 pahani extract produced by the petitioners for the year 2008-2009 is a created one. No reasons whatsoever have been assigned by the lower Court in giving such a prima facie finding. The said finding, therefore, is wholly unsustainable.

7. The facts of the case on hand are identical to the facts of the case cited above. Hence, the impugned orders are liable to be set aside.

8. In the result, the civil revision petition Nos.4235 and 4274 of 2016 are allowed, setting aside the impugned common order dated 19.1.2016 in I.A. Nos.88 of 2014 and 122 of 2014 in O.S. No.135 of 2014 on the file of the Court of

¹ 2012 (2) ALD 455

the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, Bhadrachalam. The Mobile Court is hereby directed to pass the orders in the above I.As on merits, afresh, after hearing the both parties, without being influenced by any of the observations made hereinabove. Till then, both the parties are hereby directed to maintain *status quo* as on today. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

December 09, 2016.

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T.SUNIL CHOWDARY, J

