

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4256 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/plaintiff is directed against the orders dated 02.06.2015 of the learned I Additional District Judge, Ranga Reddy District passed in C.M.A.no.99 of 2013, whereby the learned I Additional District Judge had confirmed the order and decretal order dated 19.07.2013 of the learned Principal Senior Civil Judge, Ranga Reddy District passed in I.A.no.560 of 2012 in O.S.no.886 of 2013.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff ('the petitioner', for brevity) and the learned counsel for the respondent/defendant ('the respondent', for brevity). I have perused the material record. The parties shall hereinafter be referred to as the petitioner and respondent as arrayed in this revision petition.

3. The introductory facts, in brief, are as follows:

The petitioner brought a suit for perpetual injunction in respect of house property bearing door number 13-1-55/1/5 situated in an area admeasuring 853.34 square yards at Babbuguda village of Balanagar Mandal, Ranga Reddy District, more fully described in the schedule annexed to the plaint. In the said suit, the petitioner had also filed the aforementioned interlocutory application for grant of a temporary injunction to restrain the respondent/defendant from interfering with the petitioner's peaceful possession and enjoyment of the aforementioned property pending final disposal of the suit. The said petition was resisted by the respondent. At the time of enquiry before the trial Court, exhibits P1 to P26 and exhibits R1 to R31 were marked. On merits, the trial Court had directed both the parties to maintain *status quo* till disposal of the suit and observed in its orders that both the parties shall get ready for trial and expeditious disposal of the suit. Aggrieved of the said orders, the petitioner had filed the aforementioned

CMA. By the orders impugned, the learned I Additional District Judge had dismissed the CMA and confirmed the orders of the court below and had directed the plaintiff not to raise any constructions in the petition schedule property. Therefore, the petitioner/plaintiff is before this Court.

4. Before proceeding further, it is necessary to refer to, *infra*, the pleadings and contentions of the parties.

4.1 The case of the plaintiff, in brief is this: "One Ahmed Athaulla and his family members had obtained a layout from the Gram Panchayat, Mossapet vide permit no.2/2 on 09.05.1950 in respect of certain land in Sy.no.18 of Babuguda village of Ranga Reddy district. Plots bearing nos.196, 197, 202 and 203 admeasuring 803.84 square yards were sold to one Lalithamba and the sale in her favour was transacted through the GPA holder by name Khaleelullah. The said purchaser Lalithamba had constructed a residential house therein. The said house was assigned door no.1-55/1/5 and was assessed to municipal tax. The municipal taxes were paid by her, regularly. The said Lalithamba had sold the said property/subject property to the petitioner, under registered sale deed dated 26.06.1996 bearing no.2859/1996. The petitioner having spent huge amounts had developed the property. Having paid the penalty to the Municipality, he had got the building regularized vide proceeding No.G2/977/BRS/98-99, dated 04.09.2000. The property was mutated in the name of the petitioner in the municipal records, vide proceedings no.A/21677/2002, dated 06.05.2002. Thus, the petitioner is in possession and enjoyment of the schedule property as absolute owner. He had entered into a development agreement with M/s. Krishna Sai Constructions vide document no.1808/2010 and had obtained permission from GHMC for construction of a multi-storied residential complex. Permission was accorded for construction of stilt + 5 floors, vide permit No.354/HO/W2/CIE-14/2010 dated 23.12.2010. When the construction activity was in progress, the respondent who has no manner of right had tried to interfere with the peaceful possession of the petitioner over the subject property. Hence, the suit for perpetual injunction and the application for

temporary injunction are filed.'

4.2 In the defence, the respondent having denied the claim of the petitioner had *inter alia* contended as follows: 'One Ahmed Athulla and his brothers are the original owners and possessors of a total extent of ac.44.19 guntas of land in Sy.nos.1,13(P), 14, 16A, 16AA, 18A, 18AA, 29 and 30. The said Athulla and his brothers had obtained a layout dated 09.05.1970. They had executed agreement-cum-GPA dated 30.06.1980, vide document bearing no.616/1980, in favour of Khaleelullah. Thereafter, the said Khaleelullah and others had sold the entire land covered by the layout under registered sale deed dated 12.12.1981 in favour of Kanaka Durga Co-operative Housing Society Limited. The respondent had purchased the suit plots in the year 1985 for a consideration of Rs.85,000/-. A plot was allotted on 20.02.1993 by Kanaka Durga Cooperative Housing Society Limited and it had executed an agreement of sale by receiving balance sale consideration of Rs.2,35,000/-. The possession of the plot was delivered to the respondent. However, on account of ban on registrations, the respondent could not obtain a registered document. In the year 1998, when the petitioner and others had tried to interfere with the possession of the plots no.150, 151, 152, 165, 166 and 167 in the same layout, the GPA holder of the original owner Khaleelullah had filed O.S.nos.397/1998, 398/1998 and 399/1998 on the file of the learned I Additional Junior Civil Judge Court, Ranga Reddy District. The said suits are consolidated. During the course of trial of the said consolidated suits, certain documents were sent to the Forensic Science Laboratory for obtaining an opinion of an expert. After full-fledged trial, the said three suits were decreed and appeals were filed in A.S.no.152 of 2005, 153 of 2005 and 154 of 2005 on the file of the learned V Additional District Judge Court, Ranga Reddy. The respondent had filed O.S.no.32 of 2011 on the file of the learned I Additional Senior Civil Judge's Court, Ranga Reddy. In the said suit, the said Court had granted *status quo* orders in I.A.no.226 of 2011. The respondent had also filed O.S.no.393 of 2011 on the file of the said Court against the son of the 1st defendant and another for grant of injunction. In the said suit, the *ex parte* orders, which were initially granted, were later made

absolute. The CMA 143 of 2011 and 144 of 2011 filed by the petitioner and another were allowed by the learned I Additional District Judge, Ranga Reddy. The respondent is taking steps to prefer revision. The respondent is in possession of the schedule property.'

5. The learned counsel for both the sides had advanced contentions in line with the pleadings of the parties.

6. The learned counsel for the petitioner had further contended as follows:

The orders of the Court below are erroneous. The Court below having directed the petitioner not to proceed with the construction, impliedly accepted possession of the petitioner. Therefore, the Court below ought to have granted temporary injunction as prayed for instead of confirming the orders of *status quo* granted by the trial Court. While confirming the orders of *status quo*, an erroneous direction not to make construction was given by the Court below. The court below ought to have seen that the injunction order in favour of the respondent was vacated in CMA 144 of 2011 filed by the petitioner herein and that the said proceedings relate to another suit in O.S.no.32 of 2011. The Court below ought to have seen that the petitioner had acquired right, title and interest from her vendor and has been enjoying the property peacefully having purchased the property under valid document dated 26.06.1996 and that therefore, she is entitled to a temporary injunction as prayed for pending final disposal of the suit. The Court below ought to have seen that the building was constructed by the petitioner and that the petitioner had spent huge amounts and developed the property and that the property was also mutated in her name in the municipal records. The court below ought to have seen that the respondent is creating unwarranted litigation though in the parallel suit, the right, title and interest of the petitioner herein are confirmed.

7. On the other hand, the learned counsel for the respondent while supporting the orders of the Court below had contended that there are several suits in respect of the same property and that therefore, the order directing the parties to maintain *status quo* coupled with a direction to the petitioner not to

proceed with the construction is a balanced and justifiable order.

8. The facts and contentions are already stated supra, in detail. The property originally belonged to Ahmed Athulla is not in dispute though the respondent further contends that the property originally belonged to Ahmed Athulla and his brothers. Khaleelullah is the power of attorney holder of the original owner is also not in dispute. The original owner(s) had obtained a layout from the Gram Panchayat, Moosapet. According to the petitioner, one Lalithamba had purchased the subject property from the original owners through their power of attorney holder Khaleelullah. The petitioner further claims that she has purchased the subject property from the said Lalithamba vide document no.2859/1996 dated 26.06.1996, i.e., exhibit P1. She had further filed the plan sanctioned for the construction of the house, the property tax and other receipts besides special notice of property tax etcetera; and the said documents are also exhibited. The respondent inter alia contends that the original owners have not sold the property to Lalithamba, but the original owner had sold the property to Kanaka Durga Cooperative Housing Society Limited, the vendor of the respondent. Though the petitioner claims that from the original owner, her vendor-Lalithamba had purchased the property through the GPA holder Khaleelullah, no documents showing the antecedent title of Lalithamba are exhibited. Exhibit P2 is the development agreement entered into by the petitioner with a third party for construction of a multi-storied residential complex. Be that as it may. When there were earlier disputes in respect of the very same property, the GPA holder of the original owner(s) by name Khaleelullah had filed three suits, viz., O.S.no.s397/1998, 398/1998 and 399/1998 against the petitioner and others is not in dispute. All the suits were decreed and the appeals that arose from the decrees in the said three suits were dismissed. On the other hand, the respondent had filed O.S.no.393 of 2011 against the son of the petitioner herein and another. Though interim injunction orders were granted in favour of the respondent in the said suit, the CMA filed by the petitioner and another were allowed by the learned I Additional District Judge, Ranga Reddy District. Though CMA nos. 143 and 144 of 2011 are allowed, the subject matter of the said CMAs is the

property covered by plots nos.150, 151, 152, 165, 166 and 167, whereas the instant suit subject property is covered by plot nos.196, 197, 202 and 203. Further, the respondent had exhibited exhibits R2 and R3, the agreements of sale, besides exhibit R4, the modified agreement of sale in favour of Kanaka Durga Cooperative Housing Society Limited and exhibit R1, the agreement of sale by virtue of which the respondent claims to have purchased the subject property. Exhibit R10 is the layout obtained by the power of attorney holder-Khaleelullah from the Gram Panchayat. In the aforesaid circumstances, for not filing the copy of the antecedent title deed in favour of Lalithamba, the predecessor-in-interest of the petitioner, the Court below had held that the petitioner could not make out a *prima facie* case for granting an injunction. The Court below further observed that if injunction is granted, the petitioner would proceed with construction of a multi-storied residential building and that she would further go ahead with the sale of the completed flats in the complex to third parties and that such a course of action, if is allowed to take place, it would create multiplicity of litigation and that therefore, balance of convenience is in favour of the respondent and not in favour of the petitioner.

Accordingly, the court below while confirming the orders of *status quo* granted by the trial Court directed the petitioner not to raise any construction pending final disposal of the suit, obviously to avoid multiplicity of litigation and complex situations that would arise in case of ultimate failure of the petitioner to succeed in the suit. Having carefully gone through the record and having given earnest consideration to the facts and submissions, this Court is satisfied that the orders impugned in the revision are justified and that therefore, the said orders do not warrant interference and that this revision is devoid of merit and is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

01st June 2016

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