

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.4354 of 2015
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ORDER:

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This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 by the petitioners/plaintiffs is directed against the orders dated 19.06.2015 of the learned II Additional District Judge, Kurnool at Adoni passed in IA.No.273 of 2015 in AS.No.16 of 2015 filed by the petitioners/appellants in the aforesaid first appeal suit for a temporary injunction restraining the respondents from interfering with their possession and enjoyment of the petition schedule property, pending final disposal of the appeal suit.

2. I have heard the submissions of the learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for short). I have perused the material record.

3. The respondents, who are served with notices, had not entered appearance.

4. The submissions as set out in the grounds of revision and made at the hearing, in brief, are as follows:

The plaintiff brought a suit for perpetual injunction in respect of three items of agricultural lands more fully described in the schedule annexed to the plaint *inter alia* contending that they are owners having right, title, interest and possession over the said lands. The defendants resisted the suit by filing a written statement *inter alia* contending that the suit lands are inam lands and that they are cultivating the said lands being in possession as the inamdars. After full fledged trial, the trial Court had dismissed the suit. The aggrieved plaintiffs had filed the first appeal suit and also an interlocutory application in IA.No.273 of 2015 and sought a temporary injunction during the pendency of the said first appeal *inter alia* contending that the ex parte

temporary injunction granted in favour of the plaintiffs at the time of institution of the suit was in force till the dismissal of the suit and that the plaintiffs have got a fair chance of success in the appeal suit and that the trial court had erroneously went into the question of title in a suit for perpetual injunction and did not grant the perpetual injunction incidentally holding that the title is not established and by applying the principle that possession follows title; and that the trial Court did not at all examine the khas possession of the plaintiffs, which is established by filing apart from other documents the ryot passbooks etcetera. The Court below erroneously dismissed the temporary injunction application only because the trial Court had dismissed the suit on merits and as it was of the view that at the interlocutory stages the correctness or otherwise of the findings of the trial Court cannot be examined. Though the court below in its orders had *inter alia* observed that in an application for temporary injunction a *prima facie* case of possession and balance of convenience have to be examined, it had failed to examine the said aspect while dismissing the application of the plaintiffs.

5. I have bestowed my attention to the facts and the submissions stated *supra*.

6. The fact remains that there is a temporary injunction order, though an *ex parte* order, in favour of the plaintiffs from 02.03.2010 till the dismissal of the suit on 23.01.2015. In view of the said fact, in the well considered view of this Court, a temporary injunction as prayed for can be granted as from the facts narrated it emerges that there is a *prima facie* case.

7. Viewed thus, this Court finds that the order impugned warrants interference.

8. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. Accordingly, there shall be an order of temporary injunction in favour of the plaintiffs for a limited period of two (02) months from today. The Court below is directed to dispose of the first appeal suit as expeditiously as possible and preferably within a period of one (1) month from today. It is made clear that the Court below shall dispose of the appeal

suit purely on its own merits and in accordance with the procedure established by law, uninfluenced by the observations, if any, made by this Court in this order. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

Date:18.02.2016

Vjl