

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4547 of 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, filed by the unsuccessful defendants 1 to 3/appellants is directed against the judgment dated 09.08.2012 of the learned Senior Civil Judge, Yellamanchili passed in C.M.A.no.4 of 2012 whereby the learned Senior Civil Judge, while dismissing the said CMA, had confirmed the decree and decreetal order dated 24.01.2012 of the learned Principal Junior Civil Judge, Yellamanchili passed in I.A.no.623 of 2012 in O.S.no.158 of 2011 filed under Order XXXIX Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 for temporary injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property pending disposal of the suit.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants 1 to 3 ('the defendants', for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. A perusal of the material record and a careful consideration of the submissions made before this Court would disclose that the plaintiffs brought the suit for perpetual injunction against the defendants *inter alia* stating that the first plaintiff is the owner of the plaint schedule property and that the 2nd plaintiff is her husband and that the 3rd plaintiff is their son and that they are in possession and enjoyment of the plaint schedule property till the date of the suit and that the rice mill therein was given on rent. On the other hand, the 1st defendant had filed a counter denying the averments and *inter alia* contending as follows: -'The plaint schedule property does not tally with the sale certificate schedule property and that the property covered in the alleged sale deed and the sale certificate reveal that the petitioner and the respondents in I.A.no.138 of 1967 in O.S.no.27 of 1963 were mentioned as

'permanent lessees' and that neither of them was mentioned as absolute owner of the property and that the said fact strengthens the contention of the 1st defendant that M.V.V. Satyanarayana is not the owner of the suit schedule property and that he cannot convey the said property to the 1st plaintiff. The sale certificate clarifies that the property sold in auction was the Mill and its machinery standing on the land but not Ac.1.00 cents with Mill and machinery thereon. The plaintiffs are not in possession and enjoyment of the plaint schedule property, more particularly, the land. This defendant does not know whether the Mill was let out to civil supplies department by the 1st plaintiff. There are coconut trees in some part of the land and the defendants 1 to 3 and their family members are enjoying the usufruct of the trees since several years. The 1st defendant is the descendant of the branch of one Pilla Durgayya. The 2nd and the 3rd defendants are the descendants of the branch of one Pilla Somayya. Both Pilla Durgayya and Pilla Somayya had together succeeded to the land of an extent of Acs.0.50 cents in survey number 405/B and R.S.no.54/1 of Yellamanchili village from their ancestors. There is another piece of land of Acs.0.50 cents in survey number 405/1B and R.S.no.54/1 of Yellamanchili village lying on the South of Acs.0.50 cents of land belonging to Pilla Durgayya and Pilla Somayya that belonged to Kotaru Sanyasi Naidu and others, forming a contiguous bit of an extent of Ac.1.00 cents. One N. Pothuraju, the ancestor of the plaintiff in OS.no.27 of 1963 had set up a rice mill in some part of the above extent of land of Ac.1.00 cents on entering into a formal contract of lease with the owners, i.e., Pilla Durgayya, Pilla Somayya and Kotaru Sanyasi Naidu for a period of 99 years under a registered lease deed bearing document no.1460/1933. There is no clause in the said lease deed that the lessee Nagireddy Pothuraju can sub-lease the property. Therefore, the legal heirs of Nagireddy Pothuraju only can exercise the leasehold rights in the property and none else. Hence, Missula Veera Venkata Satyanarayana was neither the owner of the property nor permanent lessee as mentioned in the sale certificate. The Revenue Inspector's report dated 22.06.2011 and the report of the MRO are not binding on the defendants as the same are given without any authority. The findings in the

judgment in the former suit in O.S.no.100 of 2005 and in the concomitant appeal in A.S.no.5 of 2010 are not binding on the defendants. Further, the possession of the 1st plaintiff, if any, as alleged by her is nothing less than that of a trespasser's possession. Since the defendants 1 to 3 are owners of part of suit schedule property, no injunction can be granted against them. The 1st plaintiff had suppressed the proceedings in MC.59 of 1997 on the file of the Sub-Divisional Magistrate, Narsipatnam and had come to this Court with unclean hands. A serious question of title was involved and, therefore, the suit ought to have been filed for declaration of title. The plaintiffs are not entitled to the relief of temporary injunction.'

4. At the time of enquiry before the Court below exhibits P1 to P6 and exhibits R1 to R7 were marked. No oral and documentary evidence was adduced by either side. On merits, the Court below had allowed the petition and granted an injunction as prayed for in favour of the plaintiffs and against the defendants. The appeal in C.M.A.No.4 of 2012 preferred by the unsuccessful defendants was dismissed by the lower appellate Court, confirming the decree and the decretal order of the trial Court. Therefore, the unsuccessful defendants are before this Court.

5. The learned counsel for the revision petitioners/defendants 1 to 3 would contend as follows:

'The Court below ought to have seen that the father of the 1st plaintiff-Missula Veera Venkata Satyanarayana himself has no title to the plaint schedule property except over the rice mill, which was purchased by him in Court auction. The same is evident from exhibit R8 and exhibit P2. Hence, the plaintiffs are having no case, muchless a *prima facie* case. No title had passed to the plaintiffs, since the father of the 1st plaintiff has no valid title. The Courts below failed to consider the exhibits properly while arriving at the conclusions; the trial Court had committed a serious error in granting temporary injunction in favour of the plaintiffs; and, the Court below had committed an error in confirming the same in the appeal preferred by the defendants.'

6. Per contra, the learned counsel for the respondents/plaintiffs, while supporting the orders of the Courts below, had submitted that both the Courts have considered the facts correctly and appreciated the documentary evidence in proper perspective and had recorded concurrent findings, which are sufficient to sustain the temporary injunction; and that the contentions now raised in this revision petition were also considered and negated by the Courts below by assigning valid reasons and that the concurrent findings in the orders of the Courts below do not warrant interference.

7. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

8. A perusal of the orders of both the Courts below would reveal that the Courts below, having considered in juxtaposition the documents exhibited by both the sides and keeping in view the pleadings of the parties, had come to a concurrent conclusion that a *prima facie* case is made out by the plaintiffs for grant of temporary injunction and that the plaintiffs are having balance of convenience in their favour and that if no injunction is granted irreparable loss would ensue to them. Having recorded the said findings, the trial Court had granted temporary injunction and the same was confirmed by the Court below for valid reasons assigned in the order impugned. Even though exhibits R8 to R22 were marked as additional evidence in the CMA preferred before the lower appellate Court, the lower appellate Court having considered the same along with the other documentary evidence already produced before the trial Court had held that the said documents do not dislodge the *prima facie* case that stood established in view of the documentary evidence in exhibit 'P' series and that on a perusal of the documents produced by both the sides, the documents of the plaintiffs are having *ex facie* relatively a better probative value for sustaining the interlocutory order passed by the trial Court. Having carefully gone through the pleadings and the concurrent findings in the orders of the Courts below, this Court finds that the findings in support of the concurrent conclusions that the plaintiffs had made out a *prima facie* case and had further established the

other necessary factual and legal requirements for granting a temporary injunction are justified and do not warrant any interference in this revision.

9. Viewed thus, this Court finds that there is no merit in the Civil Revision Petition and that the Civil Revision Petition is liable for dismissal.

10. In the result, the Civil Revision Petition is dismissed. However, since the suit is of the year 2011, the trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of three (03) months from the date of receipt of a copy of this order, however, uninfluenced by the observations, if any, in the interlocutory orders.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M. Seetharama Murti, J

18th March, 2016
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