

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.517 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioners/ defendants is directed against the orders dated 24.09.2012 of the learned II Additional District Judge, Ranga Reddy District, Ranga Reddy, passed in C.M.A.no.66 of 2012, whereby the learned II Additional District Judge had set aside the order and decretal order dated 28.03.2012 of the learned Principal Senior Civil Judge, Ranga Reddy District, passed in I.A. No.1406 of 2010 in O.S.No.1402 of 2010.

2. During the pendency of this revision, the 1st respondent/ 1st plaintiff died on 31.07.2014; and therefore, his legal representatives are brought on record as respondents 4 to 6, vide orders of this Court, dated 22.09.2015, in CRPMP No.5353 of 2015.

3. I have heard the submissions of *Sri Vedula Venkata Ramana*, learned Senior Counsel for the revision petitioners/ defendants and *Sri V.L.N.G.K.Murthy*, learned Senior Counsel representing *Sri K.Lakshman*, learned counsel for the respondents/ plaintiffs. I have perused the material record.

4. The parties shall hereinafter be referred to as the defendants and plaintiffs as arrayed in the suit, for convenience and clarity.

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

The plaintiffs 1 to 3/ respondents 1 to 3 herein brought a suit for perpetual injunction in respect of land admeasuring Ac.1.00 guntas in Sy.No.19/ AA situated at Hydershakot village, Rajendranagar Mandal of Ranga Reddy District, more fully described in the schedule annexed to the plaint. In the said suit, the plaintiffs had filed the aforementioned interlocutory

application for grant of temporary injunction to restrain the defendants/ petitioners herein, their family members, relatives, men, agents, workers, representatives and others who are claiming through them from interfering with the plaintiffs' peaceful possession and enjoyment of the aforementioned property pending final disposal of the suit. The said petition was resisted by the defendants. At the time of enquiry before the trial Court, exhibits P1 to P26 and R1 to R14 were marked. On merits, the trial Court had dismissed the said I.A.no.1406 of 2010 and vacated the *status quo* order dated 16.08.2010. Aggrieved of the said orders, the plaintiffs filed the aforementioned CMA. By the orders impugned, the learned II Additional District Judge had allowed the CMA and set aside the decree and decretal order of the learned Principal Senior Civil Judge, R.R. District, passed in I.A.no.1406 of 2010 in O.S.no.1402 of 2010 and allowed the said application and granted a temporary injunction in favour of the plaintiffs restraining the defendants from in any way interfering with the plaintiffs' possession and enjoyment over the plaint schedule property pending final disposal of the suit. Therefore, the aggrieved defendants preferred this civil revision petition before this Court.

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

6.1 The case of the plaintiffs, in brief, is this: "The plaintiffs are the absolute owners and possessors of land admeasuring Ac.3.00 guntas in Survey no.19/ AA at Hydershakot village of Rajendranagar Mandal, Ranga Reddy District having inherited the same from their father, A. Raji Reddy. Originally, the property belonged to the father and uncles of the plaintiffs, i.e., A.Raji Reddy, A.Gopal Reddy and Ramachandra Reddy and their names have been reflected in the revenue records and the Pahani patrikas from 1955-56 onwards. The lands were acquired by the family of the plaintiffs from one Golla Sattaiah; and, since 1955-56, the names of the plaintiffs' father and uncles are being

reflected in the revenue records; and thus, they have become the absolute owners and possessors of the said lands. Subsequently, there was a family settlement amongst the father and the uncles of the plaintiffs. As per the family settlement, the land admeasuring Ac.3.00 guntas in Sy.no.19/ AA fell to the share of the plaintiffs' father, A.Raji Reddy. Since that date, the father of the plaintiffs, A.Raji Reddy, became the absolute owner and his name is being reflected in the revenue records and he has been in possession and enjoyment of the same without any obstruction whatsoever. The father of the plaintiffs had cultivated the lands along with other adjacent land belonging to him and subsequently, neither the father of the plaintiffs nor the plaintiffs could cultivate the land and as such, the lands became fallow. The plaintiffs' father, A.Raji Reddy, expired in the year 1985. Thereafter, the plaintiffs being his legal heirs succeeded to the property. Thus, the plaintiffs have become the absolute owners and possessors of the entire extent of land admeasuring Ac.3.00 guntas in Sy.no.19/ AA of Hydershakot village of Rajendranagar Mandal of Ranga Reddy District. The copies of the pahani patrikas from 1955-56 till date and the Pattadar passbooks are filed along with the plaint. While so, the plaintiffs had developed a part of the land admeasuring Ac.1.10 guntas into a residential layout in the year 1990 and had sold those plots to various third parties. Initially, some of the plots were sold by the plaintiffs jointly to third parties and subsequently, the plaintiffs entered into a memorandum of family settlement for the purpose of dividing the plots amongst themselves. Thereafter, the plaintiffs have sold the plots separately. The family settlement deed dated 05.01.2005 and the sale deeds executed by the 3rd plaintiff in favour of the third parties are filed along with the plaint. A part of the land admeasuring Ac.0.25 guntas has been taken away by the Government illegally for the purpose of laying a road, i.e., the road leading from Hyderabad to Vikarabad and inspite of repeated requests the Government did not compensate them for the land acquired/taken possession. Thus, the plaintiffs

are left with about Ac.1.05 guntas of land in Sy.no.19/ AA at Hydershakot village of Rajendranagar Mandal of Ranga Reddy District after developing a layout in a part of the land admeasuring Ac.1.10 guntas and after acquisition of the land in an extent of Ac.0.25 guntas by the Government for laying road. Thus, the plaintiffs are the absolute owners and possessors of land admeasuring Ac.1.00 guntas in Sy.no.19/ AA of Hydershakot village, Rangareddy District. Subsequently, to avoid any further dispute, the plaintiffs have divided the suit schedule property among themselves through a Memorandum of Understanding dated 26.10.2005 and are enjoying their respective portions of the suit schedule property. The 3rd plaintiff had leased out a part of his property to one Kummari Krishna for carrying out the business of cement hollow bricks and accordingly, a lease agreement was entered into on 30.01.2008. The lease deed dated 30.01.2008 is filed along with the plaint. According to the plaintiffs, the land of Hydershakot village, Rajendranagar Mandal, Ranga Reddy District, has become valuable. And, the plaintiffs with all their efforts have been protecting their rights and possession over the suit schedule property. As the matter stood thus, the defendants herein without any right and authority are trying to interfere with the possession of the plaintiffs and have been making attempts to occupy the schedule land. The defendants with the help of anti-social elements came to the land on 07.08.2010 at about 6 PM and tried to enter into the land of the plaintiffs and dismantle the boundary stones with a dishonest intention to grab the schedule property. The said attempt was thwarted by the plaintiffs with the help of neighbours and other well-wishers. Yet again on 12.08.2010, the defendants tried to occupy the schedule land. The plaintiffs immediately went to Police Station, Narsingi, and tried to lodge a complaint; but, the said police did not register the complaint. Having no other alternative, the plaintiffs lodged a complaint with the Commissioner of Police, Cyberabad, and the Deputy Commissioner of Police, Cyberabad. The police advised them to approach a civil Court as the dispute is of civil nature. The

documents clinchingly establish that the plaintiffs and their father have been in possession and enjoyment of the suit schedule property since 1955-56 onwards being absolute owners. The revenue records coupled with the sale deeds, MOU etcetera would establish the possession of the plaintiffs. The balance of convenience lies in favour of the plaintiffs; and, if the defendants are not restrained from interfering with the suit schedule property by way of a temporary injunction, the plaintiffs would suffer great and irreparable loss. The defendants are highly influential people with muscle, money and political power. Unless temporary injunction is granted, the plaintiffs will not be in a position to protect their possession over the schedule property. Hence, the suit for perpetual injunction and the application for temporary injunction are filed.”

6.2 In the counter affidavit filed on behalf of the defendants 1 to 4, the defendants having denied the claim of the plaintiffs had *inter alia* contended as follows: “The averments that the plaintiffs are the absolute owners and possessors of the land to an extent of Ac.3.00 guntas in Sy.no.19/ AA of Hydershakot village, Rajendranagar Mandal, Ranga Reddy District and that they got the same by inheritance from their father and that their father and uncles had purchased the suit schedule property from Golla Sattaiah are all denied. The averment that there was family settlement among the plaintiffs’ family and that the land to an extent of Ac.3.00 guntas fell to the share of the father of the plaintiffs is invented for the purpose of the suit. The defendants 1 to 3 are the lawful owners and possessors of the suit schedule property having purchased the same from the legal heirs and successors of Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah by virtue of registered agreements of sale-cum-General Powers of Attorney under document nos.1170/ 2009, 1171/ 2009, 1172/ 2009, 1173/ 2009 and 1174/ 2009 all dated 31.03.2009 and registered at the office of the Sub Registrar, Rajendranagar. Further, the encumbrance certificates go to show that originally, Erram Mallaiah, Golla

Sattaiah, Agamaiah and Jangalaiah, sons of Erram Malla Erraiah were the owners and possessors of a vast extent of land measuring Ac.40.04 guntas in Sy. Nos.16, 17, 18/ 1, 18/ 2, 18/ 3, 18/ 4 and 19 having purchased the same from the actual Pattadar, Megad Laxmaiah, under registered document no.157 of 1345 Fasli. The registered sale deed in favour of Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah shows that the land measuring Ac.8.31 guntas was conveyed to them by Megad Laxmaiah. Out of the said extent of Ac.8.31 guntas in Sy.no.19, the Defence Authorities had acquired an extent of Ac.5.28 guntas in the year 1971 and after acquisition of the above extent, the compensation was duly allotted and paid to its owners, i.e., Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah. Golla Sattaiah died on 20.04.1969; after his death, mutation was affected in the revenue records in the names of his three surviving brothers. The copies of the income tax assessment order, the proceedings of the Collector awarding compensation to Golla Sattaiah and his brothers, the Award Settlement no.J1/ 17821/ 70 dated 24.3.1971 and the Form 'L' as to allotment of compensation to Golla Sattaiah and his brothers for the acquired part of suit schedule land by the Artillery Centre for defence purpose are filed. As against such backdrop of facts regarding the suit schedule land, the plaintiffs had preferred to file this suit with distorted facts and relying primarily on pahani patrikas from the year 1955-56 till date to establish their title over the suit schedule land. Having come to know of the manipulation in the revenue records and wrong entries, the defendants made a representation to the Tahasildar. However, on the inaction of the Tahasildar, the defendants had preferred a writ petition in W.P.No.15308 of 2008 before this Court. This Court, while disposing of the above writ petition had directed the defendants to make fresh applications to the Tahasildar for the correction of the entries in the revenue records and such application is pending before the Tahasildar for correction of entries. The plaint averments are silent as to how the father of the plaintiffs, A.Raji Reddy, had purchased the suit schedule land

from Golla Sattaiah. The law is well settled that the entries in the revenue records neither establish nor convey title over any land and no person can convey a better title than what he has. Thus, all the documents filed in support of the plaint are mere sham documents to create confusion in respect of the valid title of the defendants. Since the acquisition of part of survey no.19 by the Defence authorities, there was a dispute with regard to demarcation of the boundaries. The legal heirs of Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah had submitted an application on 05.10.2010 to the Survey and Land Records, Panga Reddy District for demarcation of boundaries. Aggrieved of their inaction, a writ petition in W.P.no.4495 of 2009 was preferred before this Court and this Court disposed of the said writ petition with a direction to conclude the survey within six weeks from the date of the order, 05.03.2009. Pursuant to the directions of this Court, the Assistant Director, Survey and Land Records, Panga Reddy District, after giving notices to all the parties concerned, conducted survey of the lands in Sy.nos.2,16, 17, 18/1, 18/2, 18/3, 18/4, 19 and 21 of Hydershakot village, based upon the Sethwar. The plaintiffs though had knowledge of the same, had suppressed the said fact in the plaint. The Assistant Director, Survey and Land Records, Panga Reddy, had concluded regarding survey no.19 as follows: "Survey no.19 is admeasuring Ac.8.31 gts. The said survey number has been demarcated and fixed the boundaries. The Survey no.19 has been divided into two parts, i.e., Southern and Northern side due to road leading from Hyderabad to Chevella. The land to an extent of Ac.5.28 gts is in possession of Defence authorities, whereas the North Western portion of the land is in possession of one M.A.Zakir (1st defendant) and others, who are the registered GPA holders of one E.Narasimha and others and who are the legal heirs of original pattadars/ writ petitioners, as there is room stated to have been constructed by them, upon which their names were written as owners of the land and also a watchman is residing in the said room." The defendants, on behalf of the legal heirs of

Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah and as the registered GPA holders and agreement holders of the suit schedule land had filed W.P.no.12879 of 2009 against GHMC, District Collector and others for grant of permission for making construction over the suit land without insisting for no objection. Similarly, W.P.no.13449 of 2009 was filed for grant of permission for construction of compound wall. The said writ petition was disposed of with a direction to consider the application of the defendants. Another writ petition in W.P.no.21724 of 2009 was filed for grant of police protection for conducting survey by the authorities of Survey and Land Records. The defendants are *bona fide* purchasers and are in lawful and peaceful possession and enjoyment of the suit land. Hence, the suit is liable to be dismissed in limine.”

7. The learned senior counsel for both the sides had advanced arguments in line with the pleadings of their respective parties.

8. The learned senior counsel for the defendants had further contended as follows:

The Court below had grossly erred in granting a temporary injunction restraining the defendants from exercising their lawful possessory right over the schedule property during the pendency of the suit. The Court below ought not to have given credence to the entries in the pahanies for the purpose of tracing the title/ *prima facie* case of plaintiffs. The Court below erred in law in treating the entries in Pattadar passbook as conclusive proof of title even in the absence of documents of title in favour of the plaintiffs to substantiate such entries. The Court below erroneously gave much importance to the said entries despite bringing to its notice the pendency of proceedings before the competent authority challenging such mutations in revenue records behind the back of the rightful owners. The Court below failed to note the falsehood in the claim of the plaintiffs with reference to Ac.1.00 guntas of suit schedule property inasmuch as their version is to the effect that while the paternal

grandfather got under the compromise proceedings "Thashwa" dated 03.07.1954, an extent of 2 ½ acres, but got the names incorporated in the revenue records for Ac.3.00 guntas and that out of the land so acquired, Ac.1.10 guntas has already been sold out by way of house plots, and out of the remaining extent, Ac.0.25 guntas has been taken away by the Government for laying road and that the suit schedule property of Ac.1.00 guntas is part of the remaining extent of Ac.1.25 guntas alleged to have been retained by them. In the absence of document of title other than the Pattadar passbook, the Court below is not right in inferring a *prima facie* case in favour of the plaintiffs. The Court below ought to have given credence to the contents of exhibit R12, survey report. It ought not to have relied on exhibit A26, a complaint to the police, as a document to justify the relief sought for in the interlocutory application. The Court below ought to have held that the plaintiffs have not made out any *prima facie* case and that they are not in physical possession as on the date of suit and that the balance of convenience is not in their favour and that granting of injunction pending suit causes irreparable loss to the defendants.

9. *Per contra*, the learned counsel for the plaintiffs while supporting the orders of the Court below had contended as under: "The Court below had rightly observed that if injunction is not granted, the defendants may interfere with the settled possession of the plaintiffs over the schedule property and that the balance of convenience is in favour of the plaintiffs. The order of the Court below is a balanced and justifiable one. The suit is filed for perpetual injunction. Hence, the issue of title is not involved in the suit. The issue of title will at best be considered incidentally, if necessary. The suit is based on settled possession. The said fact is evident when the plaintiffs' pleadings are read in entirety. The trial Court ignored the said aspects. The Court below found that the plaintiffs are in settled possession and that the possession of the plaintiffs and their predecessors is not of recent origin and that possession of

the plaintiffs was sufficiently established and that therefore, the plaintiffs have a *prima facie* case and that the balance of convenience is also in favour of the plaintiffs. Long settled possession that was established by sufficient documentary evidence is enough by any standards to sustain the order of the Court below. None of the grounds urged are valid and hence, do not merit consideration. The revision is devoid of merit and is liable to be dismissed. The order granted in September 2012 is in force for more than three and half years and the plaintiffs are enjoying the said order for quite a long time. There are no grounds calling for interference with the well considered order of the Court below. Therefore, the revision is liable for dismissal.”

10. Before proceeding further, it is pertinent to note that the defendants filed C.R.P.M.P.No.3277 of 2016 under Section 151 of the Code requesting for permission to file additional documents. Since the said application is in the nature of an application seeking permission to adduce additional evidence, the said application is coming up for disposal along with the revision. The said application was heard along with the revision and was dismissed by a separate order passed today in the said application.

10.1 The facts and contentions are already stated supra, in detail. I have given earnest consideration to the facts pleaded and the submissions made.

10.2 The suit schedule property originally belonged to four brothers, namely, Erra Mallaiah, Golla Sattiah, Agamaiah and Jangalaiah is undisputed. The plaintiffs pleaded and contended that there was earlier a dispute between the said four brothers on one hand and Raji Reddy and his brother on the other hand and that after a compromise, a ‘Tashwa’ dated 03.07.1954 has come to be executed and that Ac.3.00 guntas of land was given to the Raji Reddy and his brother. The said Raji Reddy is the father of the plaintiffs. It is the further case of the plaintiffs that the lands were thus acquired by the family of the plaintiffs from one Golla Sattaiah and that since 1955-56, the names of the

plaintiffs' father and uncles are being reflected in the revenue records and thus, they have become the absolute owners and possessors of the said lands and that as per the family settlement, the land admeasuring Ac.3.00 guntas in Sy.No.19/ AA fell to the share of the plaintiffs' father, A.Raji Reddy, and that since that date, the father of the plaintiffs, A.Raji Reddy, became the absolute owner and his name was and is being reflected in the revenue records and he has been in possession and enjoyment of the same without any obstruction whatsoever and that the father of the plaintiffs had cultivated the lands along with other adjacent land belonging to him and that subsequently, neither the father of the plaintiffs nor the plaintiffs could cultivate the land and that as such the land became fallow and that the plaintiffs' father, A.Raji Reddy, expired in the year 1985 and that thereafter, the plaintiffs being his legal heirs succeeded to the property and thus, the plaintiffs have become the absolute owners and possessors of the entire extent of land admeasuring Ac.3.00 guntas in Sy.no.19/ AA of Hydershakot village of Rajendranagar Mandal of Ranga Reddy District and that the suit schedule land which is now in possession and enjoyment of the plaintiffs is a part of it. The case of the defendants also is that the property originally belonged to the said four brothers. However, their further case is that the heirs of the said four brothers executed GPAs-cum-sale agreements on 31.03.2009. Thus, the defendants 1 to 3 further contend that they are the lawful owners and possessors of the suit schedule property having purchased the same from the legal heirs and successors of Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah by virtue of registered agreements of sale-cum-General Powers of Attorney under document nos.1170/ 2009, 1171/ 2009, 1172/ 2009, 1173/ 2009 and 1174/ 2009 all dated 31.03.2009 and registered at the office of the Sub Registrar, Rajendranagar, and that the encumbrance certificates go to show that originally the persons namely, Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah, sons of Erram Malla Erraiah were the owners and possessors of a vast extent of land measuring Ac.40.04

guntas in various survey numbers 16, 17, 18/ 1, 18/ 2, 18/ 3, 18/ 4 and 19 having purchased the same from the actual Pattadar, Megad Laxmaiah, under registered document no.157 of 1345 Fasli and that the registered sale deed in favour of Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah shows that the land measuring Ac.8.31 guntas was conveyed to them by Megad Laxmaiah and that out of the said extent of Ac.8.31 guntas in Sy.no.19, the Defence Authorities had acquired an extent of Ac.5.28 guntas in the year 1971 and after acquisition of the above extent, the compensation was duly allotted and paid to its owners, i.e., Erram Mallaiah, Golla Sattaiah, Agamaiah and Jangalaiah and that Golla Sattaiah died on 20.04.1969 and that after his death, mutation was affected in the revenue records in the names of his three surviving brothers and that the plaintiffs had filed this suit with distorted facts and that the plaintiffs are relying primarily on pahani patrikas from the year 1955-56 till date to establish their title over the suit schedule land and that having come to know of the manipulation in the revenue records and wrong entries, the defendants made a representation to the Tahasildar and that in view of the inaction of the Tahasildar, the defendants had preferred a writ petition in W.P.No.15308 of 2008 before this Court and that this Court, while disposing of the above writ petition had directed the defendants to make fresh applications to the Tahasildar for correction of the entries in the revenue records and such application is pending before the Tahasildar for correction of entries and that the plaint averments are silent as to how the father of the plaintiffs, A.Raji Reddy, had purchased the suit schedule land from Golla Sattaiah. It is also contended by the defendants that the suit for perpetual injunction simplicitor is not maintainable.

10.3 Dealing first with the documents exhibited in 'P' series of the plaintiffs, it is to be noted that though the plaintiffs did not file the title deed, if any, in favour of their father, their case is based on settled long possession supported by the revenue entries particularly, certified copies of pahani patrikas right

from the year 1955-56 upto 2009-2010 under exhibits P1 to P21 and also exhibit P22, pattadar passbook issued in the name of the 1st plaintiff and exhibit P23, pattadar passbook issued in the name of the 2nd plaintiff. Admittedly, there are no revenue records showing the possession of the defendants. The defendants kept quiet for quite a long time without questioning the entries in the revenue records. They had belatedly filed a writ petition and this Court directed them to approach the concerned revenue authorities. Their claim for rectification of revenue entries is under consideration. Therefore, as on the date of the suit and till date, the entries in revenue records are in favour of the plaintiffs and they established their *prima facie* right, interest and long possession over the suit schedule property. The entries in pahani patrikas reflect the names of the plaintiffs and their predecessors in interest in respect of the plaint schedule property. Their possession is recognised by the revenue authorities in the light of the fact that the pattadar passbooks were issued to the plaintiffs 1 and 2. The pattadar passbooks, exhibits P22 and P23, have their own evidentiary value and they *prima facie* establish the lawful possession of the plaintiffs. The said documents coupled with the copies of pahani patrikas under exhibits P1 to P21 from 1955-56 onwards, can safely be relied upon to accept that the plaintiffs are in lawful possession for over several decades and that their settled possession as is evident from the said documents makes out a *prima facie* case in their favour. This is so, more particularly in the light of the fact that the defendants could not produce any documents whatsoever to show their possession over the suit schedule property and as the defendants admittedly do not have, a document of title in their favour in respect of the suit land. Therefore, this Court finds that the plaintiffs established a *prima facie* case in their favour. Thus, a *prima facie* case, which is a *sine qua non* is amply established by the plaintiffs.

10.4 Dealing next with the documents exhibited in 'R' series, what is to be noted is that the defendants admittedly do not have a document of title in

their favour in respect of the schedule land and their claims are only based on agreements-cum-General Powers of Attorney, which are exhibits R7 to R11. As already noted, the pahanies as long back as from 1956 onwards amply reflect the possession of the father of the plaintiffs, his predecessor, and the plaintiffs. A power of attorney is not a document of conveyance and it will not create any right, title or interest in the property, is not in dispute. As rightly held by the Court below, the agreements-cum-Powers of Attorney do not confer title to the property and that agreements of sale with or without possession are not conveyances and do not create interest or charge over the immovable property in view of the ratio in *Suraj Lamp and Industries Pvt., Limited v. State of Haryana and Another* [AIR 2012 Supreme Court page 206] and the ratio in *Narandas Karsondas v. S.A.Kamtam and another* [AIR 1977 SC Page 774]. Exhibits R2 to R6 relate to acquisition proceedings whereunder a part of the land of the four brothers was acquired and compensation was later paid. Exhibit R1 is the certified copy of registered sale deed bearing No.17/ 1345 Fasali, dated 04.09.45F. Under the said sale deed, Ac.8.31 guntas was transferred by M.Lakshmaiah to E.Mallaiah, G.Sattaiah, Agamaiah, and Janagalaiah, the four brothers. The said fact that the said four brothers are the original owners of the property is not in dispute. Hence, the copy of the said sale deed is not going to advance the case of the defendants any further. A Surveyor's report or a 'Survey and Land Records Proceeding' dated 05.10.2010 under exhibit R12 is of no probative value being a document subsequent to the institution of the suit on 25.01.2010. A person deputed to measure and demarcate the land is not enjoined with any authority to make any observations as to who is in possession of the property. It is for the Court to decide the issue as to who amongst the parties is in possession of the property and such a judicial function cannot be delegated. Therefore, exhibit R12 is of no avail to the defendants.

10.5 In the decision in *Anathula Sudhakar v. P.Buchi Reddy (Dead) by L.Rs and Ors.*,¹ the Supreme Court had summarized the position in regard to suits for prohibitory injunction relating to immovable property as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar (supra)*]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

At the outset, considering the fact that this Court is presently dealing with the revision arising out of orders passed in an interlocutory application filed for

¹ AIR 2008 SUPREME COURT 2033

temporary injunction, this Court is *prima facie* satisfied that the suit for perpetual injunction is maintainable, in the facts and circumstances of the case and in the light of the documents exhibited by the parties and discussed supra.

10.6 Before adverting to the other aspects, it is necessary to mention that the learned senior counsel for the defendants had placed reliance on the following decisions: (i) In Union of India vs. Vasavi Coop. Housing Society Ltd.², the Supreme Court had held that in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant the relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of his own title and that could be done only by adducing sufficient evidence to discharge the onus, irrespective of the question whether the defendants have proved their case or not. Further, even if the title set up by the defendants is found against them, in the absence of establishment of plaintiff's own title, the plaintiff must be non-suited. As already noted, the instant suit is not one for declaration of title and this Court in this revision is now dealing with the sustainability of an order of temporary injunction granted by the Court below while allowing the civil miscellaneous appeal and as a sequel an interlocutory application filed for temporary injunction. (ii) In Ramesh Chand Ardawatiya v. Anil Panjwani³, the Supreme Court held to the following effect: "In view of Section 53-A of Transfer of Property Act, Section 6 of the Specific Relief Act, 1963 and Section 64 of the Limitation Act, 1963, the person in possession may not have title to the property yet if he has been inducted into possession by the rightful owner and is in peaceful and settled possession of such property, he is entitled to protect the possession until dispossessed by due process of law by a person

² (2014) 2 Supreme Court Cases 269

³ (2003) 7 Supreme Court Cases 350

having a title better than what he has. A person in possession of the property cannot be forcibly dispossessed by another rank trespasser and even if the latter does so, the former may be entitled to restoration of possession, because the law respects peaceful possession and frowns upon the person who takes the law into his own hands.” There is no dispute with the legal position laid down in the cited decision. In the case on hand, this Court while agreeing with the findings of the Court below recorded a finding that the plaintiffs established long settled possession of the plaintiffs and their predecessors in interest over the plaint schedule property. (iii) In Mahendra C. Mehta v. M/s. Kousalya Coop. Housing Society Ltd., Hyderabad⁴, it was held as follows: “It is well settled that entries in revenue records do not confer title. Title to a property of a person would not be lost merely because his name is not mutated in the revenue registers. So entry showing the name of a person as owner of the property, in the column relating to 'owner' does not confer title on him in relation to that property, if he is not really the owner of that property. Similarly, because the name of an individual is entered in column no.16 of the pahani, relating to 'person in actual possession', when the land is kept fallow or vacant, that entry by itself would not help him in establishing his possession during that year. The question as to who is in possession of a land kept fallow or vacant, mainly has to be decided on title. In respect of lands kept fallow or vacant, or the like, merely because the owner is not physically present thereon the land, or merely because somebody else made use of the land for a short span for temporary purpose, it cannot be said that the owner lost his possession over such land. Pahanies are maintained mainly for purpose of revenue collection, and statistics as to who raised what crop on what extent of land. Therefore when a land is kept fallow or vacant, column No.16 need not, and should not, be filled in because it relates the name of the person who "actually cultivated" the land. So merely because a person who is not the owner could

⁴ 2001 (5) ALT 197

manage to get his name entered in column No.16 of pahani, when the land is kept fallow, or when it is a vacant land, it cannot, merely on the basis of that entry without his establishing or proving positive overt acts of possession thereon, be held that he is in possession of such vacant land, of which he is not the owner.” In the case on hand, the plaintiffs are not only relying upon the revenue entries but also on pattedar passbooks to establish their settled possession. The documents produced by the defendants do not either establish their possession much less settled possession or dislodge the *prima facie* case, which the plaintiffs are able to establish by virtue of exhibits P1 to P23. Further, the defendants admittedly do not have documents showing their ownership over the suit schedule land. It is significant to note that the documents of the plaintiffs disclose their possession even at a time when the land was under cultivation for a long time. And, (iv) In *Rattan Dev v. Pasam Devi*⁵, the Supreme Court had held as follows: “The first appellate Court was bound to apply its mind to all the evidence available on record and then test the legality of the findings arrived at by the trial Court. While doing so the first appellate Court could have taken the factum of the non-examination of the plaintiff also into consideration. The manner in which the appeal has been disposed of by the first appellate Court cannot be said to be satisfactory. Non-application of mind by the appellate Court to other material though available, and consequent failure of the appellate Court to discharge its judicial obligation, did raise a question of law having a substantial impact on the rights of the parties, and therefore, the second appeal deserved to be heard on merits.” A reading of the cited decision shows that the subject matter is a regular first appeal. In the considered view of this Court, the learned Additional District Judge while disposing of the Civil Miscellaneous Appeal adverted to the pleadings of the parties, the documents exhibited and the legal position cited and applicable before recording his findings supported by

⁵ (2002) 7 Supreme Court Cases 441

reasons. A perusal of the order in the CMA reflects that the learned District Judge considered the pleadings correctly and the documentary evidence in proper perspective before recording his findings supported by reasons and also for not accepting the reasoning and conclusion of the trial Court and therefore the order impugned need not be faulted.

11. On the above analysis and in the light of the aforesaid discussion, this Court holds that the plaintiffs have a *prima facie* case and that the balance of convenience is in their favour and that if the injunction order granted by the Court below is not sustained, the plaintiffs/respondents herein suffer irreparable loss. On weighing competing possibilities or probabilities of likelihood of injury, i.e., the amount of substantial mischief or injury, which is likely to be caused if injunction is refused and comparing it with that which is likely to be caused to the other side, if the injunction is granted, this Court is satisfied that the balance of convenience is not in favour of the revision petitioners/defendants. Viewed thus, this Court is satisfied that the court below is justified in granting the temporary injunction in favour of the plaintiffs/respondents and against the defendants and that this revision petition is devoid of merit and is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. As the suit is a sufficiently old suit, the trial Court shall make an endeavor to dispose of the suit in accordance with the procedure established by law as expeditiously as possible, preferably within three months from the date of the receipt of a copy of this order.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

27th August, 2016
RAR

M. SEETHARAMA MURTI, J

