

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5451 of 2015

ORDER:

This civil revision petition, under Article 226 of the Constitution of India, by the unsuccessful 2nd defendant/2nd respondent is directed against the *ex parte* injunction order dated 19.11.2015 of the learned Sub-Divisional Magistrate & Special Assistant Agent to the Government, Mobile Court, Bhadrachalam in IA.No.287 of 2015 in OS.No.473 of 2015.

2. I have heard the submissions of the learned counsel for the revision petitioner/2nd defendant and the learned counsel for the 1st respondent/plaintiff. I have perused the material record.

3. The parties in this revision petition shall hereinafter be referred to as 'the 2nd defendant' and 'the plaintiff' for convenience and clarity.

4. The facts that lead to the filing of the present revision petition, in brief, are as follows:

The plaintiff had brought a suit against the 2nd defendant and his brother, the 1st defendant, *inter alia* stating that he is the absolute owner and lawful possessor of a site of an extent of 584 square yards in Sy.Nos.138/3 and 138/4 situate at Housing Board Colony area of Chunchupalli Gram Panchayat of Kothagudem Mandal and that he is in possession of the said site having acquired the same by virtue of a sale deed dated 06.07.2013 from one Varanasi Kalavathi wife of Shekar Rao and that the said Kalavathi had purchased the property from the original pattedar Yathavakila Ramadevi wife of Rajaiah, on 25.08.2005 and that the defendants 1 and 2 had purchased house sites near to her site i.e., the suit schedule site and that the defendants 1 and 2 are trying to trespass into her site and, therefore, she is constrained to file the suit. The plaintiff had also filed an interlocutory application and had

obtained *ex parte* temporary injunction, which is impugned in this revision petition.

5. The 2nd defendant having filed this revision petition assailing the said *ex parte* injunction order would *inter alia* contend that he is the owner in possession and enjoyment of the site of an extent of 1256 Square Yards in plot nos. 138/3 and 138/4 of Chunchupalli village and that he had already filed a suit OS.No.440 of 2015 on the file of the learned Special Assistant Agent, Mobile Court, Bhadrachalam and that in the said suit filed against Varanasi Kalavathi, the vendor of the present plaintiff, he had obtained an *ex parte* injunction on 05.11.2015 in IA.No.271 of 2015 in respect of the above said total extent of 1256 square yards and that the present property, which the plaintiff is claiming in the present suit, is a part of the said total extent and that, therefore, the injunction order subsequently obtained by the present plaintiff on 19.11.2015 is unsustainable and is liable to be vacated.

6. In reply, the learned counsel for the plaintiff would submit that the properties involved in the two suits are different and that the property that is being claimed by the plaintiff in the present suit is of an extent of 584 Square yards whereas the property that is being claimed by the 2nd defendant, who is the revision petitioner, in his suit is of an extent of 1256 Square yards and that the two properties of different extents are within different boundaries and that the properties involved in both the suits are not one and the same and that there is a dispute in regard to identity of the properties involved in the two suits and that, therefore, the order granted in favour of the plaintiff is valid and sustainable and that the said order being an *ex parte* order of injunction needs no interference in this revision and that if the 2nd defendant is aggrieved, he is obliged to approach the Court below and contest the application for injunction on merits but cannot assail the *ex parte* injunction order in this revision.

7. I have bestowed my attention to the facts and the submissions. The order impugned is only an *ex parte* order of injunction. The present plaintiff is not a party to the suit OS.No.440 of 2015 filed by the revision petitioner/2nd

defendant against Varanasi Kalavathi, who is the vendor of the plaintiff. The extents of the suit schedule properties in the two suits are different. Though the 2nd defendant contends that the property in his suit, which is of a large extent, comprises within it the plaint schedule property involved in the present suit of the plaintiff, the said fact is being disputed by the plaintiff herein and, therefore, there is a serious dispute as to the identity of the properties involved in the present suit and the suit OS.No.440 of 2015 filed by the 2nd defendant against the said Kalavathi; and, which of the two contentions of the parties is correct has to be adjudged after hearing both the parties and after giving an opportunity to the 2nd defendant to file a counter in the interlocutory application. Moreover, the two injunction orders are granted within a short span of time in two different proceedings and the present plaintiff is not a party to the former suit filed by the 2nd defendant. Having regard to the facts peculiar to the matter, this Court is of the considered view that before arriving at a just decision in the matter a detailed hearing by the Court below is necessary. Since the order impugned is only an *ex parte* order and not an order passed on merits and as the 2nd defendant has not yet filed the counter in the interlocutory application, this Court is of the considered view that the order impugned can be set aside and a direction be given to the Court below to dispose of the IA.No.287 of 2015 on merits and in accordance with the procedure established by law, however, after giving an opportunity to the 2nd defendant to file a counter and after hearing both the parties.

8. For the reasons assigned, the Civil Revision Petition is allowed and the order impugned is set aside. The Court below is directed to dispose of the IA.No.287 of 2015 in OS.No.473 of 2015 on merits and in accordance with the procedure established by law, however, after giving an opportunity to the 2nd defendant to file a counter and after hearing both the parties as expeditiously as possible and not later than a period of one (01) month from the date of the receipt of a copy of this order. However, considering the peculiar facts and circumstances of the case, there shall be in operation the interim injunction orders as prayed for in the aforesaid application in favour of

the plaintiff/1st respondent herein until the said interlocutory application stands decided on merits by the Court below as per the directions in this order, as such a course sub-serves the ends of justice.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

18.01.2016

Vjl