

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1343 of 2016

ORDER :

The revision petitioner is the plaintiff. The respondents 2 to 5 herein are the defendants 1 to 4 and the 1st respondent is defendant No.5 in the suit O.S. No.1 of 2014 filed by the plaintiff before the Sub-Divisional Magistrate, Agency Court-cum-Mobile Court at Rampachodavaram for the relief of permanent injunction. There was an interlocutory application in I.A. No.5 of 2014 to grant interim injunction including exparte, in favour of the petitioner and against the five respondents/defendants and their men from ever interfering with the peaceful possession and enjoyment of the plaint schedule property of Ac.1-78 cents in S.No.152 full and Ac.2-57 cents in S.No.154/2 of Jeddangi village of Rajavommangi Mandal, Rampachodavaram revenue sub-division. Defendants 1 to 5, of whom defendants 1 to 4 are claiming through 5th defendant being interrelated otherwise, filed counter opposing the same saying as per regulation 1/70 preceded by Regulation 1/59, there is a prohibition of transaction of alienation between non-tribal to non-tribal but not between and in favour of a tribal even from non-tribal and he purchased S.No.152, Ac.3-78 cents on 24.06.2013 under registered sale deed from Satyavathamma since died and he is in peaceful

possession and enjoyment. When the application was pending, plaintiff moved C.R.P. No.1038 of 2015 before this Court and same was disposed of by another bench on 20.03.2015 for no interim order passed on the application by keeping pending the injunction application even counter filed by the other side and thereby the revision was disposed of directing to deal with the interlocutory application supra as expeditiously as possible within a maximum period of 30 days from the date of receipt of the order and the learned Sub-Divisional Magistrate vide order dated 08.04.2015 and after hearing both sides granted temporary injunction restraining the defendants and their men from dispossessing the plaintiff from the property.

2) Subsequently, I.A. No.3 of 2016 is filed by the 5th defendant as 5th respondent to the injunction application supra and the learned Sub-Divisional Magistrate passed the impugned order dated 11.02.2016 with the observation that earlier when passed the interim injunction against the defendant-respondents in the pending suit, from it is not mentioned the fact, that in the schedule land, there is a cashew nut yield and defendant No.5 sought for change of the order by mentioning survey numbers and extents and on verified the report of the Revenue Divisional Officer, Rampachodavaram division which mentions plaintiff P.Susheela Devi is in possession of R.S.

No.154/2, Ac.2-54 cents, R.S. No.152 Ac.3-50 cents, total Ac.6-04 cents and remaining extent in R.S. No.152 of Ac.7.52 cents with Indukuri Prabhavathi, 2nd defendant and through whom claimed by 5th defendant and based on that report, set aside the injunction order in I.A. No.5 of 2015 granted after hearing both sides on 08.04.2015 referred supra and passed the order allowing to cultivate said Ac.6-04 cents only by plaintiff and Ac.7-52 cents supra in S.No.152 of 5th defendant with other defendants of saying protecting the rights of the parties until disposal of the suit.

3) It is impugning the same, present revision is filed. Heard both sides and perused the material on record.

4) The order granting by putting the defendant in possession under the guise of modification of the order that too when the earlier order granted after hearing both sides is unknown to law that too when there is no counter claim and what the provision if at all entitles to modify, vary or set aside the earlier order for any just reasons. In fact, the calling of the alleged report as to factual possession of who are in possession does not arise, that too suo motu, but for at best any revenue record including of permanent nature and adangals showing possession with nature of cultivation and by whom and with what crop yield of each fasali respectively and does not even calling of any such revenue record and verification even as a Court document

and thereby relying upon the so called report stating possession when not sought by any party is unjust inequitable and not sanctioned by law and on its face the impugned order passed by the Sub-divisional Magistrate is liable to be set aside as whether plaintiff is entitled to injunction or not in suit pending its disposal for the temporary injunction application is only to be decided and not to grant any positive relief to the defendant without a counter claim but for only to the limited extent of wasting, damaging or alienating even under Order XXXIX Rule 1 C.P.C and it is not the prayer by any of the defendants of plaintiff is wasting, damaging or alienating for granting to such extent even. Thus, at best but for setting aside the earlier order granting injunction in favour of the plaintiff and against the defendants; the order impugned is without any legal basis in putting the 5th defendant in possession of Ac.7-52 cents. Though against the order passed by the learned Sub-divisional Magistrate, it is the contention of respondents is to file appeal; giving such a positive direction putting the defendants in possession by the order, is since per se unsustainable the revision lis to set aside the same forthwith by ordering for continuing the earlier order in I.A. No.5 of 2015.

5) Accordingly and in the result, the revision petition is allowed by setting aside the order dated 11.02.2016 in I.A. No.3 of 2016 in O.S. No.1 of 2014 on the file of the

learned Sub-Divisional Magistrate, Rampachodavaram and by restoring the earlier order in I.A. No.5 of 2015 by directing the learned Sub-divisional Magistrate to re-hear and decide within one month from date of receipt of this order the application of the defendants in I.A. No.3 of 2016 only within the scope of law, for they are not entitled to any positive relief of prohibitory injunction not to interfere with their alleged possession, without a counter claim in the suit of the plaintiff; but for to the limited extent of not to cause waste, damage or alienation of any part of the property pending disposal of the suit lis. Needless to say the learned Sub-divisional Magistrate may take up the suit for disposal as early as possible. There shall be no order as to costs.

6) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

26.08.2016

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