

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.6390 of 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the defendant/respondent is directed against the orders (*ex parte* orders) dated 13.12.2016 of the learned Sub Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, Bhadrachalam, passed in I.A.No.632 of 2016 in O.S.No.564 of 2016 filed for grant of a temporary injunction not to interfere with the plaintiff's peaceful possession and enjoyment of the house bearing No. 13-1-182 situated in Ashok Nagar Colony, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of *Sri M.Srinivasa Rao*, learned counsel for the revision petitioner/defendant and *Sri C.Prakash Reddy*, learned counsel for the respondent/plaintiff. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff, who is the mother of the defendant, brought a suit against her for a perpetual injunction. In the said suit, the subject interlocutory application was filed seeking temporary injunction. The learned Mobile Magistrate granted an *ex parte* order of injunction. The said entire order reads as under:

"The respondent/ defendant, her/ henchmen, servants agents of anybody on her behalf do hereby restrained from in any way interfering with the petitioner/ plaintiff peaceful possession and enjoyment of the scheduled property till further orders." (Reproduced verbatim)

4. The learned counsel for the revision petitioner/defendant would submit that the order is not a speaking order and was one passed without following the

procedure contemplated and the rules under Order XXXIX of the Code of Civil procedure, 1908, and is therefore, unsustainable on the face of it.

5. However, the learned counsel for the respondent/plaintiff while reading the introductory portion of the impugned order would submit that the learned Presiding Officer of the Mobile Court perused the pleadings and documents and passed the impugned order and hence, the order impugned, which was passed by a revenue Court/Agency Court is sustainable.

6. I have given detailed and thoughtful consideration to the facts and submissions. This Court is not impressed with the submission of the learned counsel for the respondent/plaintiff as any Court including the Agency Court while exercising judicial functions and while dealing with civil matters is supposed to pass orders in strict accordance with law and the procedure established by law. A plain perusal of the order impugned in this revision would show that the learned Presiding Officer of the Mobile Court did not briefly state the facts and reasons and also failed to make a mention that sufficient case is made out for dispensing with the urgent notice and that sufficient case is made out for granting an *ex parte* order. Further, the Court below did not even direct plaintiff to supply copies of pleadings and documents as provided under Order 39 Rule 3 (a) of the Code to the defendant and also failed to simultaneously direct that a notice be issued to the defendant.

7. A plain consideration of the order of the Court below would show that it is not a reasoned order and that it was passed without following the relevant provisions of Order XXXIX of the Code and is therefore unsustainable. Viewed thus, this Court finds that the revision deserves to be allowed at the admission stage.

8. Accordingly, the Civil Revision Petition is allowed at the stage of admission and the impugned order is set aside with a direction to the Court below to decide the interlocutory application on merits, however, in strict accordance with the procedure established by law, nevertheless, after hearing the learned counsel for both the sides and on due consideration of the pleadings and the documents, if any, of both the sides, as expeditiously as possible, and preferably within one month from the date of the receipt of a copy of this order.

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

26-12-2016

Note:- Issue CC by 28-12-2016
(B/o)
RAR

M. SEETHARAMA MURTI, J

