

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4594 of 2015

ORDER

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful respondents/ defendants is directed against the order dated 05.06.2015 passed in C.M.A.No.41 of 2014 on the file of the Court of the learned I Additional Chief Judge, City Civil Court, Secunderabad. By the orders in the said appeal, the learned I Additional Chief Judge while allowing the said appeal had set aside the order dated 08.07.2014 of the learned XI Junior Civil Judge, City Civil Court, Secunderabad, passed in I.A.No.417 of 2013 in O.S.No.226 of 2013 and allowed the said application filed by the plaintiff/respondent herein under Order XXXIX Rules 1 and 2 for grant of a temporary injunction restraining the defendants/revision petitioners herein from interfering with the plaintiff's peaceful possession over the house property bearing Municipal No.12-11-192/ 5 & 6 in an extent of 816 square yards situated in Sy.Nos.23, 24, 25 & 31 of Upperbasti, Namalagundu, Secunderabad, more fully described in the schedule annexed to the petition and the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioners/ defendants (hereinafter, 'defendants') and the learned counsel for the respondent/ plaintiff (hereinafter, 'plaintiff').

3. To begin with, it is necessary to refer to the pleadings of the parties.

3.1 The case of the plaintiff, in brief, is this:

The plaintiff, a developer, is in peaceful possession of the plaint schedule house having acquired right and interest over the same under registered development agreement-cum-irrevocable General Power of Attorney, dated 02.02.2012, bearing document no.300/ 2012 duly executed by P.Madhusudan, N.Aruna and A. Anitha and registered in the office of the Sub

Registrar, Marredpally, Secunderabad. The said document was executed by the above said persons in favour of the plaintiff to develop the plaint schedule property and construct a residential complex with stilt plus four floors, after demolition of the structure existing thereon. The plaintiff started accordingly, the development of the property and construction of the complex. After the aforesaid document was executed, the plaintiff approached the authorities concerned for obtaining necessary permissions for construction of the residential complex over the plaint schedule property and even paid the property tax to the Greater Hyderabad Municipal Corporation (GHMC) and submitted an application for permission for construction of the residential complex. The plaintiff raised funds and engaged the services of the requisite personnel, including labourers, acquired and dumped raw material and appointed a watchman for protecting the property. The watchman and the labourers raised huts and are residing in the plaint schedule property to protect it. While so, on 18.04.2013 at about 11.30 AM, the defendants who have no concern with the property tried to interfere with the work being done by the labourers and caused obstruction to the work by making certain false claims and threatened them with dire consequences. On receiving the information, the plaintiff rushed to the property. On his enquiries, the said persons disclosed their names. They are the defendants herein. Without producing any document, they questioned the plaintiff about his right and interest over the plaint schedule property. They further threatened the plaintiff to leave the property and that otherwise they would dispossess the plaintiff from the property illegally. The plaintiff resisted their actions with the assistance of the people of the locality. Therefore, they left the property by saying that they would come again with force and unlawfully dispossess the plaintiff. On 19.04.2013, the plaintiff approached the police of Chilakalaguda and requested for taking necessary action against the defendants and to protect his life, personal liberty and property. The police stated that they cannot take any

action in matters of civil nature. Again, on 21.04.2013 at about 6 AM, when the plaintiff was disbursing labour charges to the labourers present at the plaint schedule property, the defendants with their men and followers criminally trespassed into the property, threatened the plaintiff with dire consequences, raised galata and tried to dispossess him illegally. The plaintiff resisted the illegal acts of the defendants with the assistance of the neighbours. The defendants left the property after administering a serious warning that they would within few days dispossess him unlawfully from the property. Left with no option in the aforesaid circumstances, the plaintiff brought the suit and also filed the present interlocutory application for grant of temporary injunction in his favour and against the defendants. The plaintiff is in peaceful possession of the plaint schedule property. Unless the defendants are restrained by an injunction from interfering with the plaintiff's possession of the plaint schedule property, the plaintiff is likely to suffer irreparable loss and injury besides hardship, which cannot be compensated in any manner.

3.2 *Per contra*, the case of the defendants as stated in the counter affidavits of the defendants 1 and 3, in brief, is as follows:

The averment that the plaintiff is in peaceful possession of the plaint schedule property is absolutely incorrect. The alleged development agreement is not a valid document. The persons who were said to have executed the said document in favour of the plaintiff do not have any right either over the plaint schedule property or to execute such a document. The plaintiff is put to strict proof of the title over the plaint schedule property of the said persons who executed the development agreement-cum-General Power of Attorney. The plaintiff took up development and construction work pursuant to the alleged document is totally incorrect. The various averments in the plaintiff's pleadings are false and incorrect. Though the plaintiff claims that he had obtained development agreement on 02.02.2012, till the date of the suit no sanctioned plan was obtained by the plaintiff. The alleged property receipts

are obtained illegally and the same do not prove any claim of the plaintiff over the plaint schedule property. The further averments that the plaintiff engaged labourers etcetera are all false. No persons such as watchman or labourers are in occupation of the plaint schedule property. The plaintiff never dumped any raw material in the property. The raw material is dumped by the defendants and not by the plaintiff. The overt acts attributed to the defendants are false. The defendants never indulged in any such overt acts as alleged in the plaintiff's pleadings. The defendants are the owners of the plaint schedule property by virtue of registered sale deeds and they have given the property for development to one M/ s. Nidisha Constructions. They had also obtained the sanctioned plan for construction of building. But, due to financial constraints, they could not carry out the construction work as planned. The developer appointed by the defendants started construction work long time back. The construction was completed up to the stage of foundation and pillars are about to be raised. Taking advantage of the delay in construction work, the plaintiff is trying to encroach upon the plaint schedule property having obtained a false document in his favour with incorrect house numbers. The developer appointed by the defendants has obtained power connection and paid electricity bills and the said documents establish the possession of the defendants over the property. The details of the property as mentioned in the plaint schedule do not match with the property that is actually being claimed by the plaintiff. No plan is attached to the development agreement on which the plaintiff relies upon. Without having any document much less valid document in his favour, the plaintiff is making efforts to encroach over the plaint schedule property by obtaining temporary injunction orders. Since the defendants are in physical possession of the plaint schedule property, they are entitled to resist the illegal acts of the plaintiff and the plaintiff is not entitled to any relief. The suit is not maintainable. The plaintiff in his individual capacity has no *locus standi* to file the suit against the defendants.

4. At the time of hearing before the trial Court, exhibits P1 to P18 and R1 to R13 were marked. No oral evidence was adduced.

5. On merits, the trial Court dismissed the plaintiff's petition for temporary injunction and vacated the *status quo* orders granted on 03.05.2013 by the said Court. As already noted, the Court below while allowing the CMA had set aside the order of the trial Court and allowed, as prayed for, the application for temporary injunction filed by the plaintiff. Therefore, the aggrieved defendants are before this Court.

6. The learned counsel for the defendants while reiterating their defence, which is stated supra, in detail, would further submit as follows:

The Court below ought to have seen that the plaintiff succeeds in an application for temporary injunction on his own strength but not on the weakness of the defendants' case. The Court below ought to have considered and examined the case of the plaintiff to find out as to whether a *prima facie* case was at all made out by the plaintiff. The Court below ought to have seen that the plaintiff failed to establish a *prima facie* case, which is *sine qua non*. The Court below ought to have seen that the plaintiff failed to establish that the balance of convenience is in his favour and that irreparable loss would ensue, if no injunction is granted. The Court below ought to have seen that the suit by the plaintiff is not maintainable as the plaintiff has no title and as he is only a holder of a development agreement-cum-GPA. The Court below ought to have seen that the development agreement itself is invalid and that it was created for the purpose of filing of the suit. The Court below ought to have seen that the order of the trial Court is perfectly correct and valid. The Court below ought to have seen that the trial Court dealt with the facts correctly and the documentary evidence in proper perspective. The Court below ought not to have upset the order of the trial Court, which is a well considered and well reasoned. The Court below while dealing with a Civil

Miscellaneous Appeal arising out of an interlocutory order ought not to have gone into the merits of the matter and ought not to have recorded findings which will have a bearing on the merits of the issues involved in the suit. The Court below did not properly appreciate the documentary evidence. The Court below ought to have seen that none of the documents filed by the plaintiff prove plaintiff's possession or a *prima facie* case. The Court below ought to have seen that the plaintiff having made a claim to the property with Municipal door/ house number 12-11-192/ 5 & 6 is attempting to encroach upon the property of the defendants with Municipal Number 12-11-171/ 4/ 2/ A. The Court below ought to have seen that the plaintiff claimed that the schedule property is an open land and that when the plaintiff is making arrangement to start construction, the defendants caused disturbance and caused obstruction; whereas, the defendants claimed that there are structures already raised in the schedule property. The said fact that there are structures in the property is established by the photographs filed by the defendants. Therefore, the Court below ought to have disbelieved the claim of the plaintiff. The order of the Court below is erroneous and is therefore, liable to be set aside. The CRP may be allowed and the order of the trial Court be restored.

7. *Per contra*, the learned counsel for the plaintiff while supporting the orders of the Court below and while reiterating the case of the plaintiff would contend as under:

The Court below had extensively referred to and considered the documents exhibited by both the sides and had recorded well reasoned findings before arriving at the conclusion that the plaintiff had established necessary ingredients for granting of a temporary injunction and for setting side the order of the trial Court on the ground that it is erroneous. In the facts and circumstances of the case, the Court below rightly held that the defendants failed to establish a semblance of case and that on the other hand, the plaintiff

established a strong *prima facie* case. The revision is devoid of merit and is liable to be dismissed.

8. Before proceeding further, it is apt to note that a Civil Miscellaneous Appeal in C.M.A 7 of 2014 was earlier filed against the orders dated 22.01.2014 of the trial Court originally passed in the interlocutory application and that the said CMA was allowed and the interlocutory application was remitted to the trial Court after setting aside the said earlier orders of the trial Court and that upon such remittance the trial Court considered the matter afresh and once again dismissed the interlocutory application filed by the plaintiff for grant of temporary injunction. That order of dismissal was assailed in the CMA and the CMA was allowed.

9. In the first place, it is necessary to examine the documents of the plaintiff exhibited in 'P' series to find out whether or not the plaintiff is entitled to a temporary injunction and whether or not the order impugned in this revision is sustainable under facts and in law.

10. Exhibit P1 is the registered development agreement-cum-General Power of Attorney in respect of the plaint schedule property in favour of the plaintiff. The same was executed by P.Madhusudan, N.Aruna and A. Anitha. The plaintiff claims that the said executants of Exhibit P1 are the owners and that the said owners entered into Exhibit P1, development agreement-cum-General Power of Attorney, with the plaintiff and put the plaintiff in possession of the plaint schedule property for developing it and constructing a complex with stilt plus four floors as per the terms thereof after demolishing the existing structure thereon. The said owners/executants of exhibit P1 are not disputing the plaintiff's possession over the property. According to the plaintiff, the defendants are unconcerned with the plaint schedule property and that since the defendants alone caused obstruction and tried to dispossess the plaintiff from the property, the plaintiff is constrained to file the suit and the

application for temporary injunction against the defendants. Hence, it is *prima facie* established that the plaintiff has got *locus standi* to file the suit and the interlocutory application. Perusal of schedule of Exhibit P1 discloses that it perfectly matches with the description of the property covered by the plaint schedule. Exhibit P2 is registered Release Deed dated 23.07.2010. Exhibit P3 is partition deed dated 28.07.1999. The executants of exhibit P1, viz., P.Madhusudan, N.Aruna and A. Anitha are the children of one late Lingadas. The said fact is evident from the recitals of Exhibit P1. Under exhibit P2, registered release deed, the other two executants of Exhibit P1, namely, N.Aruna and A.Anitha, released/ relinquished whatever rights they got over the property covered by the said document in favour of P.Madhusudan, their brother, who is one of the executants of Exhibit P1. Under the said document they have relinquished/ released in favour of P.Madhusudhan, their 2/3rd undivided joint right in respect of premises bearing Municipal No.12-11-192/ 6 (old 12-10-553) in Sy.Nos.23, 24, 25 and 31 admeasuring 218 square yards at Brahman Basti, Upperbasti, Namalagundu, Secunderabad. A plan is also annexed to exhibit P2. Exhibit P3, registered deed of partition, was executed between P.Lingadas and Y.Yadagiri in respect of the house property admeasuring 1196 square yards at Upper basti with house No.12-1-553 (old) and new numbers 12-11-192/ 5 and 12-11-192/ 6. The said documents, when examined with other documents of the plaintiff, would amply establish that the said Lingadas, father of the executants of exhibit P1 has got right, title and interest over 816 square yards, which is half of the extent of total 1633.55 square yards. Thus, Exhibits P2 and P3, if read together, *prima facie* establish that the executants of Exhibit P1 acquired right, title and interest over the property of an extent of 816 square yards in Sy.Nos.23, 24, 25 and 31 of Upper Basti and, therefore, they are *prima facie* competent to execute exhibit P1. Exhibit P1 reflects that it is in respect of the plaint schedule property within the specific boundaries as mentioned therein and that the said property was

delivered to the plaintiff by the executants of exhibit P1. Exhibits P4 and P5 are tax receipts in respect of the property bearing Municipal Nos.12-11-192/ 5 and 6 of Namalagundu, that is, the plaint schedule property. The said documents coupled with exhibits P1 to P3, in the considered view of this Court, establish a *prima facie* case in regard to the possession of the plaintiff over the plaint schedule property. It is pertinent to note at this stage that the defendants are not claiming the suit schedule property and as such they are not rival claimants insofar as the plaint schedule property. Their claim and their documents in Exhibit 'R' series relate to premises bearing Door Nos.12-11-171/ A/ 2/ A and 12-11-171/ A/ 2/ B admeasuring 400 square yards in all situated at Wanaspatti behind Brahman basti, Secunderabad. Therefore, the claim of the defendants in regard to their ownership and their further claims that they have given the property owned by them for development to M/s. Nidhisha Constructions and that in the said property foundation is laid and pillars are about to be raised pertain to a different property with different door numbers and their claims thus are not obviously in respect of the plaint schedule property, which bears different house numbers. Exhibit P7 also lays bare the fact that the claim of the defendants is in respect of the property with Door No.12-11-171/ 4/ A, which is a property with an altogether different door number than that of the plaint schedule property. Exhibits P10 to P12 and Exhibit P6 are filed in support of the contention that there is no property existing with door no.12-11-171/ 4/ 2/ A, which was being claimed by the defendants. Exhibit P15, certified copy of Memorandum of Understanding, and Exhibit P18, certified copy of order in I.A.No.211 of 1980 in O.S.No.52/ 1970, are helpful *prima facie* to trace out the antecedent title of the executants of Exhibit P1 in respect of the plaint schedule property, which is being claimed by the plaintiff through the said executants. The defendants are claiming rights in property bearing No.12-11-174/ 4/ 2/ A by virtue of sale deeds in their favour said to have been executed by a GPA holder. The plaintiff produced exhibit

P14, death certificate of one of the executants of the GPA in favour of the said GPA holder through whom the defendants are claiming rights under the sale deeds. The said exhibit is produced to *prima facie* show that on the death of one of the executants of the GPA, the GPA holder has no right to execute the sale deeds in favour of the defendants in respect of the property being claimed by them. Be that as it may. In the present revision, it is not necessary to go into the question as to whether or not the defendants' claim of title to a different property is established or not when *prima facie* it is established that the property being claimed by the plaintiff is different from the property to which the defendants are laying their claim. Exhibits P1 to P3 are registered documents in respect of the plaint schedule property; further, Exhibit P1 also discloses delivery of possession by the executants of exhibit P1 to the plaintiff. Exhibits P4 and P5, tax receipts, coupled with exhibits P1 to P3 establish a *prima facie* case for the plaintiff and also the possession of the plaintiff over the plaint schedule property. In view of the fact that the plaintiff is claiming a temporary injunction in his favour and against the defendants in respect of the plaint schedule property, the contention that under the guise of the said claim, the plaintiff is trying to trespass into the defendants' property, which is something else and which is a different property cannot be countenanced in the absence of any material produced by the defendants in respect thereof and in support of the said contention. Further, in view of the findings that the claim of the defendants relates to some other property and not the plaint schedule property, this Court is in agreement with the findings of the Court below that the plaintiff has established a *prima facie* case through the documents exhibited in 'P' series and that the documents exhibited in 'R' series do not either dislodge or dislocate the well established *prima facie* case of the plaintiff.

11. On the above analysis, this Court finds that there is no error either on facts or in law in the order of the Court below calling for interference. Viewed

thus, this Court finds that the order impugned in this revision brooks no interference.

12. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

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

17th September, 2016
RAR

M. SEETHARAMA MURTI, J

