

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.2516 of 2016

ORDER:

In this Civil Revision Petition under Article 227 of the Constitution of India the grievance of the petitioner/plaintiff in I.A.No.122 of 2015 in O.S.No.103 of 2015 on the file of the Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam, is that the said Presiding Officer of the Mobile Court delegated the judicial function to the Tahsildar, Dammapeta Mandal of Khammam District, by requesting him to submit the status report regarding the present physical possession and enjoyment of the suit lands within a week from the date of receipt of the Presiding Officer's letter dated 03.11.2015 for taking further steps in the pending suit.

2. I have heard the submissions of Sri Kowturu Pavan Kumar, the learned counsel for the petitioner/plaintiff ('plaintiff', for brevity) and Sri V.Raghu, the learned counsel for the respondents/defendants ('defendants', for brevity). I have perused the material record.

3. The facts necessary to be stated as preface to this order, in brief, are as follows:-

The plaintiff brought the suit for permanent injunction against the defendants in respect of dry land of Acs.10.00 guntas in survey number 566/1 and Acs.3.25 guntas in survey number 570/2, i.e., a total extent of Acs.13.25 guntas of land situated at Patwarigudem revenue village of Dammapeta Mandal. Along with the suit, the plaintiff also filed I.A.No.122 of 2015 for grant of temporary injunction pending final disposal of the suit. During the course of

enquiry, the Presiding Officer of Mobile Court, Bhadrachalam, addressed a letter dated 03.11.2015 to the Tahsildar, Dammameta Mandal, requesting him to submit status report regarding the present physical possession and enjoyment of the suit lands within a week for taking further steps in the interlocutory application. Aggrieved thereof, the plaintiff filed this revision.

4. At the hearing, the learned counsel for the petitioner would submit that the suit is filed before the Mobile Court, Bhadrachalam, for permanent injunction in respect of immovable property and that it is for the learned Presiding Officer of the Mobile Court to decide the necessary issues that arise for consideration in the interlocutory applications by adverting to the cardinal principles, namely, *prima facie* case, balance of convenience and irreparable loss if no injunction is granted and that the learned Presiding Officer of the Mobile Court has to arrive at a just decision in the interlocutory application by taking into consideration the documentary evidence and the oral evidence, if any, that may be brought on record by the parties and that the issue as to who among the parties is in possession of the suit lands has to be decided by the learned Presiding Officer and that the said function, being a judicial function, cannot be delegated to a revenue officer. He would also submit that pursuant to the letter written to the Tahsildar, Dammameta Mandal, the Tahsildar entrusted the matter to the Revenue Inspector by further delegating the matter and that the said Revenue Officer, having collected evidence, submitted a report to the Presiding Officer of the Mobile Court and that if the said evidence, which is inadmissible and which is illegally collected, is taken into consideration, the plaintiff would be put to serious hardship and loss.

5. *Per contra*, the learned counsel for the respondents would submit that the orders calling for the report from the Tahsildar were not passed by the Presiding Officer behind the back of the plaintiff and that by a specific docket order dated 03.11.2015, the report was called for from the Tahsildar and that on a subsequent date, after the report is received, further docket orders were passed on 29.04.2016 directing to serve copies of the report on the parties and counsel for the parties and that thereafter, the application was adjourned for hearing the arguments and that therefore, the course that was adopted by the learned Presiding Officer is not contrary to the principles of natural justice and that the learned Presiding Officer cannot be faulted for adopting the said course.

6. I have bestowed my attention to the facts and submissions.

7. In the well-considered view of this Court, as rightly contended by the learned counsel for the plaintiff, the Presiding Officer of the Mobile Court is required to adjudicate and decide the interlocutory application for temporary injunction by taking into consideration the legally permissible and admissible evidence and not any extraneous material, which is not legally admissible. The learned counsel for the respondents/defendants also fairly concedes that the interlocutory application shall be decided only on legally permissible and admissible evidence. In view of fair concession of the learned counsel for both sides, this Court is of the opinion that this revision can be disposed of with appropriate directions.

8. In the result, the Civil Revision Petition is allowed and the learned Presiding Officer, i.e., Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam, is

directed to decide on merits the interlocutory application in I.A.No.122 of 2015 in O.S.No.103 of 2015 on the file of his Court in strict accordance with the procedure established by law by taking into consideration the legally permissible and admissible evidence and not any other extraneous material, which is impermissible and inadmissible in evidence. Having regard to the fact that the interlocutory application is pending since a long time, the learned Presiding Officer is directed to decide the interlocutory application as expeditiously as possible and preferably within one month from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

30th November, 2016
Bvv

M. Seetharama Murti, J

