

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3245 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful plaintiff/ appellant/ petitioner is filed challenging the order dated 21.04.2016 of the learned Senior Civil Judge, Nagarkurnool, Mahabubnagar District, passed in I.A.No.50 of 2016 in C.M.A.No.5 of 2016.

2. The facts necessary and relevant for consideration, in a nutshell, are as follows:

The plaintiff's application for temporary injunction in I.A.No.10 of 2016 in O.S.No.6 of 2016 was dismissed by the learned Junior Civil Judge, Kollapur, by orders dated 17.02.2016. Aggrieved thereby, the plaintiff preferred C.M.A.No.5 of 2016 before the Court of the learned Senior Civil Judge, Nagarkurnool. In the said CMA, the plaintiff/ appellant filed I.A.No.50 of 2016 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('the Code') requesting to grant a temporary injunction pending final disposal of the said CMA. In that interlocutory application, an interim order was granted on 31.03.2016 for a limited period and that application stood adjourned to 21.04.2016. On 21.04.2016, a memo was filed on behalf of the plaintiff/ appellant to extend the said interim order. On that day, the respondents/ defendants entered appearance and the 1st defendant/ 1st respondent filed counter and the same was adopted by the other respondents/ defendants; and, they opposed for extension of the interim order.

In the said background, the following order was passed by the lower appellate Court.

“ORDER: Memo filed injunction order extend. Perused petition averments it found no *prima facie* case made out in favour of petitioner, memo rejected and the temporary injunction order dated 31-3-2016 is here vacated. Counter filed for R1. Memo filed for R2 to R5 adopting counter of R1 for enquiry call on 2-6-2016.” (Reproduced verbatim)

Aggrieved of the said orders, this Civil Revision Petition is filed by the plaintiff/ appellant.

3. I have heard the submissions of *Sri B.Vijaysen Reddy*, learned senior counsel for the revision petitioner/plaintiff (hereinafter, ‘plaintiff’) and *Sri P.R.Balarami Reddy*, learned counsel for the respondents/ defendants (hereinafter, ‘defendants’). I have perused the material record.

4. The learned counsel for the plaintiff would submit that the suit schedule property was gifted to the plaintiff in the year 2003 by her mother vide registered gift settlement deed dated 12.05.2003 and that the plaintiff is in long continuous possession of the suit schedule property and that the property was also mutated in the name of the plaintiff in the revenue records and that the lower appellate Court was in error in not extending the interim order and in vacating the interim order inspite of a specific finding in its earlier order made on 31.03.2016 that the plaintiff made out a *prima facie* case. He would further submit that the order vacating the interim order is a cryptic order and is not a speaking order and that in view of the said erroneous orders, great hardship and

prejudice is caused to the plaintiff; therefore, the said order is liable to be set aside.

5. *Per contra*, the learned counsel for the defendants while supporting the said orders of the lower appellate Court would contend as follows: 'The plaintiff is residing in U.S.A. In the suit, she is being represented by GPA Holder, N.Pramod Kumar Reddy. Even the said GPA Holder was not available in India on the date the CMA was preferred before the lower appellate Court. The CMA was neither instituted by the plaintiff nor her power of attorney holder, who is representing her in the suit. Since neither the plaintiff nor her power of attorney holder, who instituted the suit on her behalf, was available in India, the CMA was filed by a third party, said to be a watchman or a caretaker and who is unconcerned with the *lis*. However, he filed the CMA by taking aid of a Photostat copy of the vakalat signed by the power of attorney holder of the plaintiff. Thus, the CMA was instituted without proper authority that too by a third party who is unconcerned and who has no *locus standi*. On 21.04.2016, the defendants entered appearance in the CMA before the Court below and the 1st defendant filed her counter and the other defendants filed memo adopting the counter filed by the 1st defendant and brought to the notice of the Court all the facts and also the fraud played on the Court in instituting the CMA and enlightened the Court about the facts and circumstances and the absence of *prima facie* case in favour of the plaintiff. Having examined all the facts, the Court below did not extend the order and vacated the interim order and adjourned the CMA and the interlocutory application filed in the CMA to 02.06.2016.

The CMA itself is not maintainable as it was not properly instituted by a person duly authorized and as fraud was played upon the Court.'

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

7. The plaintiff's application for temporary injunction was dismissed by the trial Court. Aggrieved thereby, the plaintiff preferred CMA before the lower appellate Court. In that CMA, the plaintiff filed an interlocutory application for grant of a temporary injunction pending final disposal of the CMA. The lower appellate Court initially granted an interim order for a limited period. When extension of the interim order was sought on 21.04.2016 by filing a memo for extension of the interim order, the lower appellate Court refused to extend the interim order and vacated the same. Be it noted that on that day, the defendants 1 to 5 entered appearance and the 1st defendant filed a counter and the other defendants adopted the same by filing a memo. It is also not in dispute that as on the date of the institution of the CMA before the lower appellate Court, neither the plaintiff nor her power of attorney holder was in India and therefore, a third party had filed the CMA. No doubt, as per the settled law, a third party can file an interlocutory application by signing the pleadings provided he is in a better position than the party himself/ herself or his/ her power of attorney and has knowledge of the facts, which are to be stated in the pleadings. However, a third party cannot institute a proceeding like a Civil Miscellaneous Appeal without any authority from the plaintiff by way of a GPA as contemplated under law or without due delegation of required authority by the power of attorney holder of the plaintiff. It is also not disputed before this Court that along with the CMA a Photostat copy of the vakalat already signed

by the GPA holder of the plaintiff was filed as the GPA holder was not available in India to sign the vakalat for institution of the CMA. Nothing prevented the plaintiff from appointing a fresh power of attorney or agent for doing the needful. But that was not done. Therefore, the contention of the defendants that the CMA itself is illegally instituted and that fraud was played while instituting the CMA before the lower appellate Court requires a detailed examination at the time of hearing and disposal of the CMA before the lower appellate Court. In that view of the matter and on over all consideration of the facts of the case, this Court finds that there is no illegality or jurisdictional error in the orders of the Court below calling for interference.

8. Viewed thus, this Court finds that there is no merit in the revision and that the revision is liable for dismissal leaving it open to the lower appellate Court to dispose of the CMA on its merit and in strict accordance with the procedure established by law after taking into consideration all the facts and also the contentions of both the parties.

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

Having regard to the submissions and the peculiar facts, the Court below is directed to endeavour to dispose of the CMA as expeditiously as possible and in any event within two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

24th October, 2016
RAR

M. SEETHARAMA MURTI, J

