

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.4002 OF 2017

ORDER:

Assailing the reversal order dated 27.07.2017 in C.M.A. No.11 of 2017 passed by the learned III Additional District Judge, Asifabad, whereby and whereunder, temporary injunction order dated 26.06.2012, granted by the learned Junior Civil Judge, Sirpur-T, in I.A. No.94 of 2011 in O.S. No.26 of 2011, was set aside, the present Civil Revision Petition is preferred under Article 227 of the Constitution of India.

2. The revision petitioner - plaintiff, filed the suit in O.S. No.26 of 2011 on the file of Junior Civil Judge, Sirpur-T, requesting for grant of relief of perpetual injunction, concerning Ac.0-16 cents (equivalent to 0.8 guntas) in Survey No.123-E of Koutala Village and Mandal, Komram Bheem Asifabad District. Along with the suit, he filed I.A. No.94 of 2011 for temporary injunction under Order - XXXIX, Rule - 1 read with Section 151 of the Code of Civil Procedure, 1908 (CPC). Respondent Nos.1 and 2 herein, who are defendant Nos.1 and 2, resisted the same by filing counter.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the application.

4. During enquiry, on behalf of the petitioner, Exs.P-1 to P-7 were marked, and, on behalf of the respondents Exs.R-1 to R-12 were marked, to substantiate their respective cases.

5. The learned Junior Civil Judge, basing on Exs.P-1 to P-7 entries found that the petitioner proved his *prima facie* possession over the subject land and thereby granted temporary injunction. Aggrieved over the same, the respondents preferred C.M.A. No.11 of 2017 and the learned III Additional District Judge, Asifabad, having received additional evidence marked as Exs.P-8 to P-10 on behalf of the petitioner and Exs.R-13 to R-19 on behalf of the respondents, allowed the C.M.A. setting aside the temporary injunction granted by the trial Court, and the same is now under challenge in the present revision.

6. Heard Sri P. Ravi Kiran Rao, learned counsel for the petitioner, and Sri R.K. Chitta, learned counsel for the respondents, and perused the material on record.

7. The learned counsel advanced arguments in an attempt to justify the stand of the petitioner and the respondents, respectively. The learned counsel places refers to the ruling of the Hon'ble Supreme Court in **Neon Laboratories Limited v. Medical Technologies Limited**¹ as to interference of an appellate Court with the discretion exercised by the trial Court, more particularly, for the

¹ 2016 (1) ALD 97 (SC)

proposition that the appellate Court would normally not be justified in interference with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion and if the discretion has been exercised by the trial Court reasonably and in a judicial manner, the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion and the appellate Court shall be careful and not to transgress in the frontiers.

8. In **K. Ramamoorthi v. C. Surendranatha Reddy**², a learned Single Judge, while dealing with admissibility of an unregistered document, having referred to the legal proposition, has deduced from the case law, examined the scope of Section 49 of the Registration Act, 1908, and opined that for the limited purpose of proving the plaintiff's possession, which is an unregistered document and impounded, is admissible in evidence.

9. In **Pratima Dutta v. Nilima Seal**³, a Division Bench of Hon'ble Division Bench of Calcutta High Court, while sitting in a first miscellaneous appeal against a discretionary order passed by the trial Court, dismissing the request sought for on the ground that *prima facie* case was not proved, opined that it would not be proper to

² 2012 (6) ALD 163

³ 1998 A I H C 790

interfere with such finding even, if it is possible to arrive at a different conclusion.

10. The learned counsel for the respondents has also relied in **N.R. Dongre v. Whirlpool Corporation**⁴ for the proposition that not only three traditional requirements have to be satisfied but also, the Court must take into consideration the conduct of the parties since injunction is an equitable relief. In **State of Andhra Pradesh v. Star Bone Mill and Fertiliser Company**⁵, the Hon'ble Supreme Court held that no person can claim a better title than he himself holds; that a revenue record is not a document of title; it merely raises a presumption in regard to possession and presumption of possession and / or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act, 1872; possession may *prima facie* raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known; when the facts disclose no title in either party, possession alone decides; but, the presumption, which is rebuttable is attracted when the possession is *prima facie* lawful and when the contesting party has no title.

11. Having heard both sides, it is felt that it would be appropriate to remit the matter to the first appellate Court to decide afresh by taking into consideration, the unregistered document of title filed by the petitioner which was excluded while admitting, in view of

⁴ (1996) 5 SCC 714

⁵ (2013) 9 SCC 319

the decision in **K. Ramamoorthi**², as the present suit is for perpetual injunction simpliciter. The reasons for remitting the matter are that the learned first appellate Court having observed that the sale deed dated 08.04.1981 filed by the petitioner is an unregistered one and hit by Section 17 of the Registration Act, 1908, and, therefore, it cannot be admitted into evidence even for collateral purpose, but, still, renders a finding basing on the entries in Exs.P-8 and P-9 observing thus:

“... .. Exs.P8 & P9 now filed by the plaintiff also makes it manifest that the unregistered sale deed now filed into court is fabricated one.”

He would, of course, observes that compounding fee was collected by way of impounding the document.

The second reason is, in the very same paragraph No.8, he reiterates the finding, thus:

“... .. As already stated supra plaintiff tried to put forth a fabricated document and did not produce the sale deed said to have been executed by Smt. Sakkubai. AS such it is clear that plaintiff did not come to court with clean hands and he failed to prove that he has got prima facie title to the suit schedule.”

The third reason is, the learned first appellate Court records a finding in paragraph No.9, thus:

“In the case on hand the dispute is not only about identity and location of suit schedule, but also about the basis of the claim of plaintiff and also about his attempting to put forth a fabricated document. As such he is not entitled to relief of temporary injunction and a decision relied upon by him is not helpful to him. As such it is clear that the temporary injunction granted to the plaintiff by the lower court is liable to be set aside and the point is held accordingly.”

12. By reading the aforesaid extracted portions in the order under challenge herein, it is clear that the learned first appellate Court records a positive finding that the title deed filed by the petitioner is a fabricated document. Such a positive finding cannot be recorded by the learned first appellate Court in an interim order, in fact, it ought to have left it open to the trial Court to decide the genuinity or otherwise of the unregistered title deed, more particularly, when he did not admit it in the evidence by marking it as an exhibit, at least, referring to that it cannot be used for collateral purpose as held by this Court in **K. Ramamoorthi²**.

13. Thus, what all to be found from the order is that since the petitioner pressed into service a fabricated document, he is not entitled to temporary injunction.

14. Therefore, the order under challenge is liable to be set aside and is accordingly set aside remitting the matter to the learned appellate Court with a direction to afford an opportunity to both sides

to tender their arguments in the light of the decisions referred to hereinabove and any other decision, which they intend to project in considering whether the unregistered title deed can be marked as an exhibit, and, to decide the matter afresh within two (2) months from the date of receipt of a copy of the order.

15. The Civil Revision Petition is accordingly allowed.
There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision stand closed.

August 24, 2017.
PV

A. SHANKAR NARAYANA, J

