

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.5327 of 2017

ORDER:

The defendants, in O.S.No.154 of 2014 on the file of the II Additional Junior Civil Judge, Kurnool, are the petitioners in the present revision, filed under Article 227 of the Constitution of India.

This revision calls in question the order, dated 24.08.2017, passed by the learned VI Additional District Judge, Kurnool, in C.M.A.No.13 of 2015.

The circumstances, leading to filing of the present revision, are as follows:

Respondent herein instituted O.S.No.154 of 2014 against the petitioners herein for the relief of permanent injunction to restrain them from interfering with the peaceful possession and enjoyment of the schedule property. Along with the said suit, respondent herein also filed I.A.No.200 of 2014, under Order XXXIX Rules 1 and 2 CPC, seeking temporary injunction. Resisting the said application, the first defendant filed counter and defendant Nos.2 to 4 adopted the same. No oral evidence was adduced either by the plaintiff or the defendants. On behalf of the plaintiff-respondent herein, Exs.P1 to P18 were exhibited and Exs.R1 to R17 were exhibited on behalf of the defendants-petitioners herein. The learned Junior Civil Judge, by way of an order, dated

18.06.2015, disposed of the said I.A.No.200 of 2014, directing both parties to maintain *status quo* as to the possession in respect of the petition schedule property as on the date of filing of the suit till the disposal of the suit, while vacating *ad-interim* injunction order, dated 16.04.2014. As against the said order passed by the trial Court, plaintiff preferred C.M.A.No.13 of 2015 on the file of the VI Additional District Judge, Kurnool. The learned District Judge, by way of an order, dated 24.08.2017, allowed C.M.A.No.13 of 2015, granting injunction in favour of the plaintiff-respondent herein.

In the above background, the instant revision is filed, assailing the validity and legal sustainability of the said order passed by the learned VI Additional District Judge in C.M.A.No.13 of 2015, dated 24.08.2017.

Heard Sri Dasari S.V.V.S.V.Prasad, learned counsel for the petitioners-defendants, and Sri Virupaksha Dattatreya Gouda, learned counsel for the respondent-plaintiff, apart from perusing the material available before the Court.

Learned counsel for the petitioners contends that the order passed by the learned VI Additional District Judge is highly erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order XXXIX Rules 1 and 2 CPC; that the impugned order is the result of improper

appreciation of the material available on record by the learned District Judge; that the learned Judge grossly erred in disturbing the well-considered order passed by the trial Court; that the learned District Judge, without finding fault with the order passed by the trial Court, is not justified in passing the questioned order.

Per contra, it is maintained by the learned counsel for the plaintiff-respondent herein that the impugned order does not suffer from any error or infirmity, as such, the same is not amenable for any interference of this Court under Article 227 of the Constitution of India. It is further contended that, only after extensively and elaborately considering the entire material available on record, the learned Additional District Judge passed the impugned order by assigning cogent and convincing reasons.

In the above background, now the issues that emerge for consideration of this Court are:

1. Whether the questioned order, passed by the learned Additional District Judge, is sustainable and tenable?
2. Whether the impugned order warrants any interference of this Court under Article 227 of the Constitution of India?

It is settled principle of law that the primary purpose of granting interim relief, under Order XXXIX Rules 1 and 2 CPC, is to evolve a workable formulae, by keeping in mind the *pros* and *cons* of the matter and by striking a balance

between two conflicting interests viz., injury and prejudice likely to be suffered by the plaintiff in the event of refusal of relief and the injury and prejudice likely to be experienced by the defendant in the event of granting the relief. It is also an established proposition of law that, as a matter of course, a person is not entitled for the relief of injunction and discretion is required to be exercised by the Court in favour of the plaintiff and, in the event of the same being denied, it would result in any irreparable loss and damage to the person asking for. The relief in the form of injunction can be granted in order to meet the ends of justice.

In **STATE OF KARNATAKA v. STATE OF ANDHRA PRADESH¹**; **FOOD CORPORATION OF INDIA v. YADAV ENGINEER AND CONTRACTOR²**; **WANDER LIMITED v. ANTOX INDIA (P) LTD³** and **DORAB COWASJI WARDEN v. COOMI SARAB WARDEN⁴**, the Honourable Apex Court held that the power to grant injunction is discretionary as also equitable and the temporary injunction cannot be claimed as a matter of right nor the Court grants such injunction as a matter of course and being an equitable relief, before deciding the injunction application, the Court would keep in mind several aspects and a Court of equity would exercise discretionary power in granting temporary injunction only if justice, equity and good conscience required to issue such

¹ 2000 (9) SCC 572

² 1982 (2) SCC 499

³ 1990 SUPPL. SCC 727

⁴ 1990 (2) SCC 117

order and the Court is satisfied that its intervention is necessary in the interest of justice. For obtaining interim relief of temporary injunction under Order XXXIX Rule 1 CPC, the person applying for has to show *prima facie* case in support of right claimed, balance of convenience and irreparable loss. The existence of *prima facie* case is a *sine qua non* or a condition precedent for the purpose of exercising power to grant injunction under Order XXXIX CPC. The person applying for injunction is obligated to demonstrate before the Court that, in the event of refusal to grant injunction, he will have to suffer irreparable injury and he is also obligated to demonstrate that balance of convenience is in his/her favour. Therefore, the Courts, while considering the applications, filed under Order XXXIX Rules 1 and 2 CPC, are required to examine as to whether balance of convenience and irreparable loss and injury are present in favour of the person applying for.

The issues in this Civil Revision Petition are required to be examined and verified in the light of the principles and parameters mentioned supra and in the facts and circumstances of the case.

According to the plaintiff-respondent herein the plaint schedule property is in her possession and enjoyment and the defendant Nos.1 to 3, on the instigation of the fourth defendant, demolished 'B' schedule property, a part of 'A'

schedule property and in the event of permitting their attempt to remove the rest of the structures, he would sustain irreparable loss and injury. On the other hand, the defendants pleaded that one Sri V.Chenchaiah and his wife-Thimmakka, by virtue of a registered Gift deed, dated 04.01.1968, gifted plaint 'A' schedule property jointly to their daughters viz., Nagamma (mother of the plaintiff) and Ramanamma and also 'B' schedule property of one last room only on the western side and open space in front of it and its further west. It is the further case of the defendants that the said property does not bear separate door number; that the property allotted to the first defendant under 'B' schedule house in the eastern side portion. They further pleaded that the mother of the plaintiff acquired undivided joint rights along with Ramanamma on the western portion and one room with open space in front of it.

In order to substantiate their respective stands, plaintiff filed Exs.P1 to P12, whereas defendants filed Exs.R1 to R17. The learned Trial Judge on noticing, *prima facie*, the variation in description of property mentioned in Ex.P1, dated 11.11.1971 and Ex.P2-Gift deed, dated 24.11.2017, and, while recording a finding that there is a dispute with regard to identify of property, measurements of property and validity of Gift deed, dated 24.11.2017, disposed of I.A.No.200 of 2014, directing both the parties to maintain *status quo*. The learned

Trial Judge, while observing that when there is threat of one party demolishing the portion of other party and one party restraining the other party from proceeding with the renovation of property, came to a conclusion that all the matters alleged by one party against the other and truth thereof can be adjudicated only after full-fledged trial.

Obviously, dissatisfied with the above *status quo* orders, plaintiff preferred C.M.A.No.13 of 2015. The learned Appellate Judge allowed the appeal, by way of the order under challenge, granting injunction in favour of the plaintiff. The learned District Judge, as evident from the impugned order, found considerable difference in the extent of property shown in Exs.P1 & P2 documents but the learned District Judge had drawn presumption as to tallying of boundaries by holding that the boundaries in Exs.P1 and P2 appear to be same. The decision cannot be based on probabilities but it should be arrived at on the basis of realities. The learned District Judge, at paragraph No.14 of the impugned order, also expressed a doubt with regard to the title of the plaintiff. In fact, in view of all these aspects, which can be adjudicated after full-fledged trial, the learned Trial Judge directed the parties to maintain *status quo* with regard to possession of the property. The object of injunction is obviously for the preservation of the rights of the parties pending litigation. Obviously, taking the said fact into consideration, the Trial Judge directed *status*

quo with regard to possession. Therefore, in the facts and circumstances of the case, the learned appellate Judge ought not to have set aside the said order. As rightly observed by the learned Trial Judge, all these contentious issues are required to be adjudicated after full-fledged trial only and, in the considered opinion of this Court, *status quo* in all respects would be proper relief.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order passed by the learned VI Additional District Judge, Kurnool and it is made clear that the parties to the litigation shall maintain *status quo* in all respects.

As a sequel thereto, miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

11th December, 2017
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