

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.2376 of 2017

ORDER:

The revision petitioner is the sole defendant in O.S. No.29 of 2014 on the file of the Junior Civil Judge, Gajuwaka, Visakhapatnam District that was the suit maintained by the sole plaintiff for the relief of permanent injunction restraining the defendant and his men from interfering with his possession and enjoyment of the plaint schedule property. Pending suit, the plaintiff sought temporary injunction in I.A. No.53 of 2014 against the defendant and his men in respect of suit schedule property of 267 Sq.yds in plot No.23 of Srilu Nagar Layout covered by S.No.71/2D2 of Tunglam Village, Gajuwaka Municipal limits, Visakhapatnam District. The trial Court, from contest, by an order dated 04.02.2016 granted temporary injunction in favour of the petitioner/ plaintiff restraining the respondent/ defendant and his men from interfering with peaceful possession and enjoyment of the petitioner/ plaintiff over the subject property pending disposal of the suit. Aggrieved by the same, the defendant preferred C.M.A. No. 3 of 2016 on the file of XIII Additional District Judge, Gajuwaka and the same was dismissed by the lower appellate confirming the order dated 04.02.2016 passed in I.A. No.53 of 2014 in O.S.No.29 of 2014 by the Junior Civil Judge, Gajuwaka. Against the said order, the unsuccessful appellant in C.M.A. No.3 of 2016 filed the present revision.

2) A perusal of the order of the learned Junior Civil Judge, Gajuwaka with reference to the pleadings shows Exs.P1 to P10 and Exs.R1 to R8 viz., Ex.P1—Original Registered sale deed dated 20.07.2006 of the petitioner, Ex.P2—Original Registered sale deed dated 22.01.2004 of the vendor of the petitioner, Ex.P3—Certified copy of Possessory Sale Agreement cum GPA in favour of one Gampala Giridhar on 07.11.2003, Ex.P4—Registration extract of Sale deed dated 30.07.1997, Ex.P5—Encumbrance Certificate, Ex.P6—Photo Copy of receipt dated 22.02.2014 issued by Gajuwaka Police, Ex.P7—Photo Copy of approved layout plan, Ex.P8—Encumbrance Certificate, Ex.P9—Certified Copy of Cancellation deed dated 18.03.2004 and Ex.P10—Attested copy of orders passed by Joint Collector, Visakhapatnam vide order in Dis. No.3680/2001/D2, dated 03.08.2002. Ex.R1—Certified copy of sale deed dated 01.09.2004 of the respondent, Ex.R2—certified copy of sale agreement-cum-GPA dated 28.01.2003, Ex.R3—Certified copy of sale deed dated 16.07.2001, Ex.R4—Photocopy of Paper publication in Eenadu, dated 05.02.2004, Ex.R5—Copy of legal notice dated 16.02.2004, Ex.R6—Photocopy of order of this Court in W.P. No.908 of 2005 dated 31.01.2005, Ex.R7—Photocopy of Judgment in O.S. No.399 of 2004 passed by II Additional District Judge, Visakhapatnam, dated 22.03.2011 and Ex.R8—Encumbrance certificate dated 17.07.2004 are marked.

3) The petitioner/ plaintiff in his pleadings claims purchased the plot bearing No.23 admeasuring 267 Sq.yds in VUDA approved layout vide LP 63/06 in Srilu Nagar layout of Tunglam Village, Gajuwaka from Kakarla Sandilya under Ex.P1—registered sale deed bearing No.3377 of 2006, dated 20.07.2006 and came into possession and enjoying with absolute rights and that the plaintiff's vendors purchased the same from one Chirra Nagaraj under Ex.P2—registered sale deed bearing document No.753 of 2004 dated 22.01.2004. It is further pleaded that, prior to the execution of Ex.P2, one Chirra Nagaraj executed a possessory sale agreement with General Power of Attorney in favour of Gampala Giridhar under Ex.P3—registered sale agreement cum General Power of Attorney bearing document No.3701 of 2003, dated 07.11.2003. Chirra Nagaraju, the vendor's vendor of the plaintiff, purchased an extent of Ac.1.30 cents in Tunglam Village under Ex.P4—registered sale deed bearing document No.392 of 1998, dated 30.07.1997 from Mantena Aditya Eshwara Kumara Krishna Varma and others and came into possession. Thus, the plaintiff and his predecessors in interest since prior to 1997 are in possession and enjoyment of the property. The plaintiff is a resident of different place. He came to know that the defendant is making efforts to grab the property. In the first week of February, 2014 the defendant along with his men tried to encroach into the suit schedule property and were prevented by the plaintiff and

other plot owners of the layout. The defendant openly proclaims to encroach the same. Again on 22.02.2014, the defendant along with his men with a JCB has tried to demolish the foundation constructed and clear bushes. The plaintiff and other co-owners of the plot obstructed them. The plaintiff presented police complaint to Gajuwaka Police Station under Ex.P6—receipt, however, police stated the issue is of civil nature and cannot interfere with the same.

4) The defendant's counter opposing the injunction application reads that, he is the absolute owner of agricultural land an extent of Ac.1.00 cents covered by S.No.71/2D2 of Thungalam Village, Gajuwaka Mandal, Visakhapatnam and the same was purchased from his vendor P.Ranjana Banu through his GPA holder by name Piadimari Ramakrishna for Rs.6,66,000/- under Ex.R1 registered sale deed, dated 01.09.2004, since then he is in peaceful possession and enjoyment uninterruptedly. The said P.Ranjan Bau executed sale agreement cum GPA, dated 28.01.2003 in favour of P.Ramakrishna. He further stated that his vendor purchased the property from on P.Appala Raju, P.Gopala Raju and P.Rama Raju under the registered sale deed dated 16.07.2001 under Ex.R3 and prior to purchase of the property, P.Ramakrishna has got issued a paper publication on 05.02.2004 in Eenandu Newspaper through his counsel by name M.V.J.Ramgopal under Ex.R4 and also issued legal notice to P.Ranjan Babu as well as

Commissioner of Gajuwaka Municipality and Chairman of VUDA, Visakhapatnam under Ex.R5 and mere revalidation of BLP by VUDA will not create any title or ownership in respect of the suit schedule property in favour of the plaintiff's vendor as the vendor of the respondent by name P.Ramakrishna has colluded with vendor's vendor of the plaintiff and others to deprive the defendant and said P.Ramakrishna executed sale deed after receiving the consideration and after obtaining clearance from ULC and put the defendant in possession of the property and the defendant is thereby, in possession and enjoyment. The vendor's vendor of the petitioner/ plaintiff using his political influence and police force to create nuisance and trying to disturb the possession of the defendant and filed W.P. No.98 of 2005 dated 31.01.2005 against P.Ramakrishna, T.Omkar under Ex.R6, police officials and this Court ordered the police not to interfere with the civil dispute. Previously, one T.Omkar filed a suit in O.S. No.399 of 2004 on the file of the II Additional District Judge, Visakhapatnam against the defendant and P.Ramakrishna, that was ended in dismissal after trial on 22.03.2011 under Ex.R7. He obtained Encumbrance certificate for the period from 31.03.1991 to 16.07.2014 under Ex.R8, and the field survey number, boundaries and measurement of suit schedule property are totally false and not tallying with the physical possession of the schedule property and the suit

won't lie and liable to be dismissed for no grounds to grant injunction.

5) The rejoinder of the plaintiff to the written statement of defendant in the suit is that the defendant purchased Ac.1.00 cents under a registered sale deed document No.P2391 of 2004 (927/2012) dated 01.09.2004 from one P.Ramakrishna, who is the GPA holder, who is the GPA holder of P.Ranjan Babu. Prior to the execution of the sale deed, P.Ranjan Babu has executed General Power of Attorney cum irrevocable sale agreement in favour of P.Ramarishna bearing No.P159/2003 (1084/2003) dated 28.01.2003 and the same was cancelled by document No.1021 of 2004 dated 18.03.2004 under Ex.P9. After perusing the document No.197 of 2003, the said P.Ranjan Babu has purchased the property of Ac.1.00 cents from P.Appala Raju, P.Gopal Raju and P.Rama Raju.

6) The trial Court referring to the pleadings and the documents supra while granting temporary injunction in favour of the plaintiff observed that both parties are fighting with each other claiming title over the said property on the strength of their respective documents. Ex.P10—pattadar pass books and title deeds of the vendor's vendor's vendors were cancelled by the Joint Collector, Visakhapatnam vide order in Dis. No.3680/2001/D2, dated 03.08.2002 on the ground that the said pattadar pass book and title deeds were obtained by them by producing a forged will.

7) The defendant is claiming title through Ex.R1—sale deed dated 01.09.2004 executed by P.Ramakrishna, GPA holder of P.Ranjan Babu and as can be seen from Ex.P9—GPA executed by P.Ranjan Babu in favour of P.Ramakrishna on 28.01.2003 and the same was cancelled by P.Ranjan Babu under registered cancellation deed dated 18.03.2004. Ex.R1 was executed subsequent to Ex.P9 and the executant of Ex.R.1 has no power to execute in favour of defendant. There is also reference to Ex.P9 cancellation under Ex.P8—Encumbrance certificate. Admittedly the schedule property is a vacant plot. The legal proposition in respect of the vacant site is “possession follows title”. The petitioner filed Ex.P1—registered sale deed showing title over the said property to plaintiff with reference to Exs.P2 to P4, which are link documents to Ex.P1 and thereby, there is prima facie case, balance of convenience and irreparable injury are in favour of the plaintiff for granting injunction pending suit.

8) The order of the lower appellate Court in dismissing the appeal on 31.01.2007 is with observations that among Exs.P1 to P4, the source of title of plaintiff traces back to Ex.P4, dated 30.07.1997 and among Exs.R1 to R3 placed reliance by defendant in making the rival claim of possession and title are later to it.

9) Heard both sides at length with reference to the above and perused the material on record.

10) Coming to the correctness of the impugned orders of the lower Courts in granting injunction in favour of the plaintiff with concurrent findings with observations of existence of prima facie case, balance of convenience and irreparable injury, showing the plaintiff has right and possession from the documents relied by plaintiff covered by Exs.P1 to P10 particularly among Exs.P1 to P4, the registered sale deeds tracing the title of the plaintiff since prior to Ex.P4—dated 30.07.1997. Whereas among Exs.R1 to R8, claiming in respect of the self same property under Ex.R1—registered sale deed to the defendant traces back the GPA under Ex.R2, based on Ex.R3—sale deed of 2001. It is to be decided ultimately in the suit, whether it is in respect of the self same schedule property or if so, it is covered by title of defendant traces back to Ex.P4, dated 30.07.1997 any title therein, the defendant can get by virtue of Exs.R1 to R3. Once there are concurrent findings of both the Courts below, referring to the documents in proof of acts of possession, from the source of title, leave about the GPA under Ex.R2 whether can be cancelled under Ex.P9 subsequently and what is the effect of Sections 201 and 202 of Indian Contract Act, with reference to the expression of this Court in ***M.John Kotaiah vs A.Divakar***¹, is a matter to decide in suit. Even Ex.P10—pattedar passbook and title deed, obtained by defendant were shown cancelled pursuant to Exs.P1 to P4. The acts of

¹ AIR 1985 AP 30

possession is in cloud thereby but for to leave in favour of the plaintiff from source of title traced back to the year, 1997. It is thus to sub-serve the ends of justice and from the settled law that all the three ingredients of prima facie case, balance of convenience and irreparable injury are even made out, the Court is not bound to grant injunction but for to impose terms with reference to the facts within the judicial discretion as also laid down by this Court in **Dasari Laxmi vs Bejjenki Sathi Reddy**², this Court is modifying the order of injunction by appointing the plaintiff as party receiver so that on ultimate disposal and result of the suit to arrive by trial Court, uninfluenced by any of the observations of the trial court or lower appellate Court or of this Court, but for on its own merits and therefrom the party ultimately is entitled to get possession.

11) Accordingly, the CRP is allowed by modifying the order of the lower Court, confirmed by the lower appellate Court, by appointing the plaintiff as party receiver. No order as to costs. Consequently, miscellaneous petitions, if any pending in this revision shall stand closed. There shall be no order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:29.12.2017
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² CRP 76 of 2014 dt.21.10.2014