

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4379 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondents assailing the order, dated 02.06.2016 of the learned VIII Additional District Judge, Panga Reddy District at L.B. Nagar, passed in IA.No.374 of 2016 in AS.no.119 of 2016.

2. I have heard the submissions of Sri Resu Mahender Reddy, learned counsel for the revision petitioners, and of Sri B. V. Subbaiah, learned senior counsel representing Sri Krupachand Gogineni, learned counsel for the respondents. I have perused the material record.

3. The revision petitioners herein are the plaintiffs. The respondents herein are the defendants.

4. The introductory facts, in brief, are as follows:

The plaintiffs brought OS.No.1512 of 2009 against the defendants for perpetual injunction in respect of three items of property, that is, 1066 Sq.yards or Ac.0-8.8 guntas; Ac.3-17.05 or 16584 Sq.yards and 500 Sq.yards in Survey no.204 of Shamshabad village and Mandal more fully described in the schedule annexed to the plaint. The defendants resisted the suit. On merits and after full fledged trial, the suit was decreed. Therefore, the unsuccessful defendants preferred the afore-said first appeal suit, AS.No.119 of 2016. Along with the appeal, the unsuccessful defendants filed I.A.No.374 of 2016 under Order XLI Rule 5 (2) of the Code requesting to suspend/ stay the operation of decree and judgment of the trial court in the afore-stated suit. The plaintiffs filed a counter resisting the said application. By the order impugned in this appeal, the lower appellate Court allowed the petition of the defendants and directed both the parties to maintain *status quo* in respect of the suit schedule

property till the disposal of the first appeal suit. Aggrieved thereof, the plaintiffs preferred this revision.

5. Learned counsel for the plaintiffs would submit as follows:

The lower appellate court erroneously granted status quo orders without assigning any reasons whatsoever and by simply observing that the trial Court granted status quo orders, on 26.11.2009, and therefore the status quo orders can be extended as the appeal suit is a continuation of the suit. The lower appellate court failed to discharge its duty in deciding the matter on merits. The suit is filed for perpetual injunction. After full fledged trial the suit was decreed in favour of the plaintiffs. The status quo orders were also in favour of the plaintiffs during the pendency of the suit. Interim order in the nature of injunction or status quo will be effective till the disposal of the suit and comes to an end with the disposal of the suit by a judgment and decree. There is a status quo order pending disposal of the suit; and, when once the suit of the plaintiffs is decreed on merits after full fledged trial, the lower appellate court ought to have specified in the impugned order that the status quo is with reference to the possession of the plaintiffs instead of passing an ambiguous order. The lower appellate court was obligated under facts and in law to decide the IA on merits. The order impugned is no order in the eye of law as neither the pleadings of the parties were adverted to as required under the procedure nor were even contentions noted in the order. Further, in respect of the conclusion directing both the parties to maintain *status quo* no reasons much less valid reasons are assigned. Even though the plaintiffs' suit is decreed and there was a status quo order till the suit is decreed, the status quo orders granted during the pendency of the suit come to an end once the suit is decreed, and the decree granted on merits gets primacy and hence, merely on the ground that there was a status quo order during the pendency of the suit, the lower appellate court ought not to have granted status quo orders without

deciding the matter on merits and without even specifying as to what is the status quo as on the date the order was granted.

6. Per contra, learned senior counsel for the defendants while supporting the orders of the lower appellate court would contend as follows:

Originally, late S. Tayyabji was the owner, pattadar and possessor of agricultural land in Sy.no.204 of a total extent admeasuring Ac.4.30 cents situate at Shamshabad village and mandal. After his death his two sons and his second wife alienated Ac.4.03 guntas under three different sale deeds in favour of the plaintiffs. The remaining area of Ac.0.27 guntas continued as patta in the name of late Tayyabji. The Government also acquired Ac.0.13 guntas for road widening of NH-7. The plaintiffs having filed a claim petition, misrepresented the facts, and withdrew entire compensation of Rs.33,50,000/- and odd contending that the acquired area of the land was part of the land purchased by the plaintiffs. Thus, after deducting the acquired land from the land of the plaintiffs, the plaintiffs continued as owners and possessors of the remaining extent of land. The vendors of the defendants applied before the Tahasildar, Shamshabad, for grant of succession rights in respect of the Tayyabji's remaining property. The Tahasildar granted succession rights vide proceedings, dated 4.5.2009, and issued pattadar pass books and title deed books in the names of defendants. The defendants also requested to conduct survey and demarcate boundaries of entire Sy.no.204. The Mandal Surveyor had issued notice to plaintiffs and defendants by fixing the date of survey on 31.07.2009 at 10.00 A.M. The plaintiffs received notice and filed writ petition in W.P.No.15502 of 2009 praying to declare the action of the Collector, R.R. District and Mandal Revenue Officer, Shamshabad, in issuing notices for conducting survey and fixing boundary stones as illegal and arbitrary. The writ petition was withdrawn. On 31.7.2009, Mandal surveyor conducted survey and fixed boundary stones but the plaintiffs failed to sign the survey proceedings and threatened the witnesses. The plaintiffs are falsely contending that no

survey was conducted. The allegation of interference made against the defendants is false. The defendants are lawful owners and possessors of Ac.0.27 guntas. On 29.07.2009, the defendants alienated Ac.0.27 guntas in favour of 3rd party under registered agreement of sale cum GPA with possession. It was kept pending for registration and was subsequently registered, on 06.08.2009, in favour of the vendees. The defendants have been in actual possession of the retained extent of Ac.0.27 guntas and such possession is supported by revenue records. The plaintiffs approached this court in haste and with false allegations causing misrepresentation and material suppression of facts.

7. I have given earnest consideration to the facts and submissions. In the well considered view of this court, this matter need not detain this court for long as the order impugned granting *status quo* without going into the merits of the matter and without stating what is the *status quo* is an unsustainable order under facts and in law. It is apt to refer to the operative portion of the order impugned which reads as under:

6. It is an undisputed fact at the time of institution of the suit the trial court granted status quo orders on 26.11.2009. Therefore, I feel that such status quo orders can be extended by staying operation of the decree and judgment passed by the learned Prl.Senior Civil Judge, in OS.no.1512 of 2009 till the disposal of the appeal. So that the interests of the appellant can be protected. Moreover, the proceedings in the appeal are continuation of the suit; therefore pending adjudication of the appeal, the decree and judgment passed by the learned Prl.Senior Civil Judge can be stayed.

7. In the result, the petition is allowed, directing both parties to maintain status quo on suit schedule property till the disposal of the appeal.

8. A plain reading of the order itself shows that on the face of it the order is unsustainable. The term *status quo* is undoubtedly a term of ambiguity and gives rise to doubt. It implies the existing state of things at any given point of time. Unless what is the status quo is specified by the Court before ordering the same, the order would be ambiguous and would lead to further complications. Therefore, it is expedient not to pass such ambiguous order. In

the decision in Chirapareddi Veeramma and others v. Sk.Mahaboob Subhani and others [1991 (1) ALT 366] the facts disclose that in an IA for grant of temporary injunction pending suit, after mentioning the facts of the case and the previous litigation between the parties, a learned District Munsif stated that it may not be good for the Court to give a finding as to whether the plaintiffs or the defendants are in possession and that, therefore, it would be better to direct maintenance of *status quo* and accordingly granted *status quo* orders. Thereafter, police aid was sought for implementation of the *status quo* orders; but, the same was not granted. In that factual backdrop, this Court held as follows:

‘In matters relating to disputes regarding possession it is the duty of the court to decide one way or the other as to which party is prima facie in possession of the property. Unfortunately, in several cases coming up before the lower courts instead of giving a categorical finding as to which party is in possession, the courts frequently resort to granting orders for maintenance of ‘status quo’. Before the court passes such an order, it is incumbent on the court to give a finding as to the particular status quo that it wants to be maintained viz., whether the plaintiff or the defendant is in possession and whose possession is to be maintained. The court cannot escape its duty by merely saying that status quo is to be maintained.’

The present case before this Court is also a glaring instance of the lower appellate Court not giving a categorical finding in an application seeking suspension of the decree and judgment of the trial Court whereby the trial court decreed the suit for perpetual injunction. Whenever, under exceptional circumstances, a *status quo* order is granted instead of temporary injunction, it is incumbent upon the court to give a finding as to the particulars of the status quo that it wants to be maintained. Even that was not done in this instant case. The lower appellate court by merely directing the parties to maintain *status quo* thus failed to discharge its duty. Such an order is capable of causing greater harm than even a wrong order granting or refusing temporary injunction as per settled legal position. Further, when the unsuccessful defendants sought suspension or stay of the decree and judgment of the trial

Court, the lower appellate Court ordered *status quo* to be maintained. In view of the facts and precedential guidance, this court finds that *the status quo order*, which is ambiguous and which is granted without discharging the duty which is incumbent upon the Court and without giving a finding as to the status quo that the court wants to be maintained viz., whether the appellants or the respondents are in possession and whose possession is to be maintained, is unsustainable under facts and in law. Therefore, this Court holds that the order impugned deserves to be set aside and the matter requires to be remitted to the Court below for disposal afresh, on merits and in accordance with the procedure established by law.

9. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and IA.No.374 of 2016 in AS no.119 of 2016 is remitted to the Court below for disposal afresh on merits and in accordance with the procedure established by law. It is also made clear that since the appeal and connected appeal are of the year 2016, the lower appellate court is at liberty to dispose of either the IA which is remitted or the appeal suit itself having regard to the pendency of old and identified matters on its file.

Miscellaneous petitions, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

19.09.2017

Note: Issue CC by 05.10.2017.

[B/o]

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