

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.4923 of 2016

ORDER:

Heard.

2. The present civil revision petition is filed under Article 227 of the Constitution of India, aggrieved by the order passed in C.M.A.No.27 of 2015 by IX Additional District Judge, Chittoor, wherein the Court reversed the order dated 28.04.2015 passed in I.A.No.251 of 2014 in O.S.No.190 of 2014.

3. The facts in issue are as under:

The plaintiffs filed O.S.No.190 of 2014 for the following relief:

- i. restrain the defendants their men, agents, servants, from in any manner interfering with the peaceful acting and performing and possession of the plaintiffs as Muthavallis in respect of the plaint schedule mentioned properties by means of permanent injunction.
- ii. directing the defendant to pay the plaintiff the costs of the suit
- iii. and grant such other and further orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Pending the said suit, I.A.No.251 of 2014 came to be filed seeking temporary injunction restraining the respondents, their men, agents and their followers in any manner from interfering with plaintiffs' peaceful acting, performing as Muthavallis and

possession of the petitioner schedule property. After considering the oral and documentary evidence adduced and the exhibits marked, the trial Court, vide order dated 28.04.2015, granted temporary injunction in favour of the petitioners restraining the respondents from interfering with the peaceful possession, acting and performing as Muthavallis of Abbas Aashuru Khana Peerla Chavadi at Avulkonda Village in respect of the petition schedule property till the disposal of the suit. Challenging the same, the respondents/defendants filed C.M.A.No.27 of 2015 and the same was allowed by setting aside the order dated 28.04.2015 passed in I.A.No.251 of 2014. Aggrieved thereby, the present C.R.P. came to be filed by the plaintiffs.

4. According to the plaintiffs, their family members were performing/acting as mutawalis over the petition schedule property and prior to them it is their father who was acting as mutawali of the said property by virtue of decree in O.S.No.157 of 1992. It is the case of the plaintiffs that since 1995 their father was acting as mutawali in respect of the property and was also performing peerla festival every year till his death on 26.04.2009. Subsequent thereto, the plaintiffs were working/acting as muthavallis for the property. It is further contended that the great grand father of the plaintiffs by name Mohammed Taqiq Khan was the Jagridar of Avulakonda Zameen and he was the founder of Abbas Aashuru Khana (Naksha) Tomb situated at Avulakonda Village of Thoogundaram Gram Panchayath. The said tomb is situated in a building wherein the graveyard of the founder Taqiq Khan is located. The said building was exempted from payment of tax and

it is shown as serial number is 231. It is further submitted that the ancestors of the defendants are Muzavars of the said tomb. Except to clean the tomb, lit the lamps and decorate the tomb with flowers, they have no other role to play. For the services rendered by the Muzavars, the Jagridar of Avulkonda has set apart cultivable lands as service Inam lands and the income derived from the said lands were given to the Muzavars. It is stated that during the month of Mohurram, at the time of peerla procession 'ALLAM'-decorated with flowers which is the symbol of peerlu of Shia community, would be taken on a horse from the suit schedule building to Fakhir Thota near Thoogundaram Village, where another Peerla-Chavadi is situated. From there the "ALLAM" would be taken in a procession on a horse through the streets of Avulkonda and then to suit schedule building. The said custom is in existence since the time of housing Peerla-Chavadi in the suit schedule building i.e., from time immemorial. It is stated that the appellate Court failed to rely upon the settlement deed dated 17.07.1943 and the judgment and decree passed in O.S.No.157 of 1992 which clearly establish that the plaintiffs are the Muthavallis and that they are in possession of the suit schedule property. The same is refuted by the learned counsel for the defendants contending that the plaint in O.S.No.157 of 1992 is not the subject property. O.S.No.157 of 1992 was filed seeking a direction to remove the first defendant as Muthavalli and to appoint the first plaintiff as Muthavalli. It is stated that the property in O.S.No.157 of 1992 is in respect of Survey Nos.255/7, 258/1 and other survey numbers. A reading of the plaint filed in O.S.No.157 of 1992

would clearly show that said Bakir Ali (great grandfather of plaintiffs) used to perform peerla festival etc., in his maternal house in Avulakonda and hence the plaintiffs' right is restricted to that extent, but not to the subject property. The respondents further contend that the judgment and decree in O.S.No.157 of 1992 is an *exparte* decree and not in respect of schedule mentioned property. Further, the civil court has no jurisdiction to appoint muthavallis under Muslim Law and hence the said decree is null and void. It is further stated that defendant No.2 is the absolute owner of land in Survey No.333 admeasuring Acs.13.12 cents, who alienated the said land for consideration in favour of one Vardhaiah and handed over possession on the same day, but plaintiffs filed another suit in O.S.No.543 of 2012 with false allegations.

5. As seen from the records, during the course of trial, Exs.P1 to P13 were marked on behalf of the petitioners/plaintiffs and Exs.R1 to R13 were marked on behalf of the respondents. Insofar as the present suit i.e., in O.S.No.190 of 2014 is concerned, plaintiffs failed to mention the details regarding the suit schedule property. There is no reference of boundaries to the suit schedule property. Now the issue is whether the property in the present suit is same to the one in O.S.No.157 of 1992? Though the trial Court held that the properties are one and the same, there is no material to show that the properties in both the suits i.e., in O.S.No.157 of 1992 and O.S.No.190 of 2014 (present suit) are one and the same. The said fact is the only ground which lead the appellate Court to set aside the order and decretal order dated 28.04.2015 passed in I.A.No.251 of 2014 in O.S.No.190 of 2014.

6. As there is no material to show that the property in O.S.No.157 of 1992 and the property in the present suit i.e., O.S.No.190 of 2014 are one and the same, I do not find any reason to entertain the C.R.P. and I see no reason to interfere with the order passed by the appellate Court in C.M.A.No.27 of 2015. However, the trial Court shall dispose of the suit as early as possible, preferably within a period of three to six months from the date of receipt of a copy of the order.

7. Accordingly, the C.R.P. is disposed of. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.



JUSTICE C. PRAVEEN KUMAR

17.03.2017
vnb