

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.5639 OF 2010

Date: 03.08.2017

Between:

Mandava Usha Rani W/o Venkata Ramana,
Aged about 43 years, Occu: Household,
r/o. H.No.5-103/1, Behind Rita Public School,
Bharathnagar, Hyderabad and another.

.....Petitioners/
Plaintiffs

and

Sri M.Anjaneyulu, S/o Subba Rao,
Aged 37 years, occu: Employee,
r/o H.No.8-210/1, Prasoona Nagar,
Chintal, Quthbullapur Municipal Circle,
GHMC, R.R.District and others.

.....Respondents/
Defendants



The Court made the following:

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ORDER:

Petitioners herein are the petitioners/plaintiffs in I.A.No.22 of 2010 in O.S.No.104 of 2005 pending on the file of II Additional Junior Civil Judge at Medchal, Ranga Reddy District. Petitioners filed I.A.No.22 of 2010 under Order XVI Rule 6 read with Section 151 of Code of Civil Procedure to call for original thumb impression register containing document No.1648 of 2001 from the Sub-Registrar Office for the purpose of sending the same to appropriate authority for comparison and report. The said petition is resisted by the respondents/defendants. The trial Court rejected the petitioners' plea holding that suit is for injunction simplicitor and is coming up for arguments and in injunction suit, plaintiffs have to prove their possession of the suit schedule property as on the date of filing of the suit and, therefore, they should prove their contention by adducing cogent evidence on record and they cannot seek assistance of the Court.

2. Heard learned counsel for petitioners and learned counsel for respondents.

3. Learned counsel for petitioners submits that suit property was owned by Smt Ramana Vasundhara. On 08.08.1997, they borrowed a sum of 1,00,000/- from the plaintiffs and executed a registered mortgage deed in respect of 5960 square yards in Sy.No.75 of Gajularamaram village, Quthubullapur Mandal. As the original borrowers failed to repay the amount, they have executed second mortgage of property subject to a prior charge on

21.08.1997 in favour of husband of the first petitioner. According to the learned counsel, the same was validated on 18.06.2004. While so, respondents/defendants marked document No.1648 of 2001 as Exhibit B3, dated 28.02.2001, where under, it is stated that the first petitioner executed the said document in favour of Smt. Ramana Vasundara, re-conveying the property mortgaged by receiving an amount of 1,00,000/- as principal and 40,000/- towards interest. Learned counsel submits that at no point of time, amount was paid by the borrowers and that first petitioner has not executed reconveyance of mortgage deed as alleged by the respondents/defendants. According to the learned counsel, the said document is forged and fabricated and created by the vested interest. He, therefore, submits that unless the original thumb impression register from the office of the Sub-Registrar is summoned for sending the same to appropriate authority to verify the thumb impression, it would cause grave prejudice to the petitioners. Learned counsel submits that though suit is filed for permanent injunction, the burden is on the plaintiffs to establish, *prima facie*, that they have title in addition to establishing possession on the date of institution of the suit. By introduction of Exhibit B3 - document, the very stand of the plaintiffs is said to be adversely affected to the respondent/defendants.

4. Learned counsel for respondents submits that as the suit is for a bare injunction, what is required to be established by the plaintiffs is possession on the subject property at the time of institution of the suit and, therefore, the authenticity of exhibit B3 need not be gone into in the present suit proceedings and this petition is filed only to drag on the suit.

5. A bare look at the pleadings filed in support of the I.A., opposed by the respondents, as noticed by the trial Court, it is clear that original owner of the property is person, by name, Smt. Ramana Vasundhara. Petitioners claim possession and ownership of the said property by virtue of mortgage deed executed by the owner subject to a prior charge and later validating the same on 18.06.2014. To deny the said claim of the plaintiffs, the respondents/defendants introduced exhibit B3 alleged to have been executed by the first petitioner reconveying the property mortgaged to Smt Ramana Vasundara. Petitioners dispute the thumb impression found on the document and contend that the same does not belong to the first petitioner.

6. Though the suit is for a bare injunction, burden also lies on the plaintiffs to establish, *prima facie* title to the subject property in addition to possession as on the date of institution of the suit. As it turns out the mortgage and reconveyance of the mortgage, as claimed by the rival parties, has a bearing on the issue agitated in the suit. Though the trial was concluded, it appears that request was made soon after conclusion of the trial and there was no inordinate delay. It cannot be said that the prayer in I.A.No.22 of 2010 is not valid.

7. When petitioners dispute the correctness of the document presented as Exhibit B3, in the interest of justice and for proper adjudication of the dispute before the Court, the trial Court ought to have allowed the plea raised by the petitioners in calling for the record from the Office of the Sub-Registrar. As the issue goes to the root of the matter, in the interest of justice, the Court is

inclined to grant relief as prayed by the petitioners in I.A.No.22 of 2010.

8. Accordingly, the revision petition is allowed and consequently, I.A.No.22 of 2010 in O.S.No.104 of 2005 on the file of II Additional Junior Civil Judge at Medchal is allowed. The trial Court is requested to take further steps as required.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

Date: 03.08.2017
kkm



JUSTICE P.NAVEEN RAO

HON'BLE SRI JUSTICE P.NAVEEN RAO



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