

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos. 5373 and 5549 of 2016

COMMON ORDER:

These two civil revision petitions are being disposed of by this common order as the defendants in O.S.Nos.9 and 10 of 2016 on the file of the learned Senior Civil Judge, Parchur are common.

These civil revision petitions arise out of separate orders, dated 13.10.2016, passed by the learned I Additional District Judge, Ongole in CMA Nos.11 and 12 of 2016 reversing the separate orders, dated 28.04.2016 passed by the learned Senior Civil Judge, Parchur in I.A.Nos.133 and 132 of 2016 in O.S.Nos.10 and 9 of 2016.

Both the suits were filed for the relief of permanent injunction and the trial Court granted temporary injunction in favour of the plaintiffs. The defendants preferred CMA Nos.11 and 12 of 2016 and the lower appellate Court allowed the CMAs by setting aside the orders passed by the trial Court. Challenging the orders passed by the lower appellate Court, the plaintiffs filed the present civil revision petitions.

In the orders, dated 28.04.2016, the trial Court granted temporary injunction holding that the plaintiffs are in possession of the suit schedule properties and it observed that neither the plaintiffs nor the defendants have *prima facie* title over the suit schedule properties. The trial Court also observed that since there is a dispute with regard to the title, the question as to whether defendant No.1

was a co-owner or not, cannot be decided and accordingly, denied the objection of the defendants with regard to the grant of injunction against the co-owner.

In the orders, dated 13.10.2016, the lower appellate Court held that the entries in Exs.P1 and P2, on which reliance is placed by the plaintiffs, are not conclusive. Peculiarly, with regard to the entry made in Ex.P6, the lower appellate Court observed as follows:

“The petitioner filed Ex.P6-No.3 adangal for fasli 1420 to prove that he is in possession and enjoyment of the property and presumption has to be drawn in favour of the entry in Ex.P6. It is true that in Ex.P6 adangal for fasli 1420 the name of the plaintiff is shown but the entry in revenue record cannot form basis for declaration of title.”

The lower appellate Court failed to see that the suit was not filed for declaration of title, but it is only a suit for permanent injunction. It also recorded a finding that defendant No.1 was a co-owner and no injunction can be granted against the co-owner. No finding was recorded with regard to the possession of the parties. Since the CMAs arose out of the interlocutory applications granting temporary injunction, the lower appellate Court should have considered the *prima facie* title and possession for deciding the appeals. As this Court is satisfied that the relevant facts are not considered and findings were recorded by considering the suit as the one filed for declaration of title, this Court is constrained to set aside the impugned orders passed by the lower appellate Court and remand the matters to it for considering afresh and passing appropriate orders in accordance with law, on or before 30.04.2017.

The possession remained as on the date of filing of the CMAs shall continue till disposal of the appeals.

The civil revision petitions are accordingly allowed.

Miscellaneous petitions, if any, pending in these revisions shall also stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO,J

Dt:10.02.2017

kdl

