

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.4630 of 2017

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order passed in I.A.No.53 of 2016 in I.A.No.122 of 2015 in O.S.No.103 of 2015 by the Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam, dated 30.08.2017, vacating the interim injunction granted in I.A.No.122 of 2015 in O.S.No.103 of 2015 dated 04.07.2015 by the said Court in favour of the petitioner/plaintiff.

2. Initially, the Court below granted an interim injunction on 04.07.2015 in I.A.No.122 of 2015 in O.S.No.103 of 2015 believing that the petitioner is in *prima facie* possession and enjoyment of the suit schedule property. But, on appearance, the respondents/defendants filed I.A.No.53 of 2016 to vacate the said interim order by exercising power under Rule 42(c) of A.P. Agency Rules (for short 'the Rules') as they are also claiming possession over the suit schedule property. The Court below called for report from the Tahsildar, Dammipeta, and on receipt of the same, as it reveals that the land to an extent of Acs.6.22 gts in Sy.No.566 is in possession of the petitioner/plaintiff and the lands to an extent of Ac.4-10 gts in Sy.No.566 and Ac.1.33 gts in Sy.No.570/2 are in possession and enjoyment of respondent No.4/defendant No.4, the Court below vacated the interim order granted in I.A.No.122 of 2015 in O.S.No.103 of 2015 dated 04.07.2015 and directed both the parties to maintain *status quo* with regard to possession of their respective shares.

3. The main contention raised by the counsel for petitioner before this Court is that calling for a report from the Tahsildar is contrary to the law laid down by this Court in **Maloth Veeru @ Heerala and others V.**

Guguloth Mangi¹ and that when there is a dispute with regard to physical possession over the property and both parties are claiming possession over the said property, the Court has to enquire into and record a finding as to who is in possession of the property based on the material placed by both the parties and issuing a direction to maintain *status quo* based on the report of the Tahsilder by the Court below, is illegal and it leads to serious consequences and therefore, he prayed to set aside the order passed by the Court below.

4. On the other hand, learned counsel for respondents supported the order impugned in all respects.

5. As seen from the material on record, the petitioner and the respondents are claiming possession of the suit schedule property, which is an extent of Acs.13.25 gts i.e., Acs.10.00 gts in Sy.No.566/1 and Acs.3.25 gts in Sy.No.570/2 situated at Patwarigudem Revenue Village, Dammapeta Mandal, Khammam District, within the boundaries mentioned in the schedule annexed to the plaint. At the same time, respondent No.4/defendant No.4 is also claiming possession over the property. In such case, the duty of the Court below is to clarify as to who is in actual *prima facie* possession of the suit schedule property and record such finding while deciding the application under Rule 42(c) of the Rules or under Order 39 Rules 1 and 2 of CPC. But, instead of recording such finding, the Court below resorted to ensure procedure i.e., calling for report from the Tahsildar to find out as to who is in possession of the property, is no way concerned with the suit proceedings, but based on the report submitted by the third party, the Court below passed the order directing both the parties to maintain *status quo* as on that date. Adopting such procedure by the Court below is deprecated by this Court in **Maloth**

¹ 2012(2) ALD 455

Veeru @ Heerala's case, referred supra. Despite it, the Court below followed its own procedure, which is not contemplated either under the Rules or under the Civil Procedure Code. Therefore, passing the impugned order directing both the parties to maintain *status quo* based on the report of the Tahsildar, which was submitted unilaterally, the order cannot be sustained in law.

6. Issuing a direction to maintain *status quo* without recording a finding of fact that who is in *prima facie* possession would lead to serious consequences, sometimes, it may lead to bloodshed. In such case, the order directing both the parties to maintain *status quo* is illegal and therefore, the order impugned is hereby set aside, while directing the Court below to decide the petition in I.A.No.53 of 2016 in I.A.No.122 of 2015 in O.S.No.103 of 2015 afresh basing on the material produced by both the parties to establish their *prima facie* possession as on the date of filing of the suit and petition notwithstanding the report submitted by the Tahsildar, as expeditiously as possible, in any event, not less than ten days from the date of receipt of a copy of this order.

7. With the above direction, the Civil Revision Petition is disposed of. No order as to costs.

8. Miscellaneous petition, if any, pending in this revision, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th December, 2017

Note:
Issue CC by 12.12.2017

sj