

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1084 of 2016

ORDER:

The unsuccessful appellants/defendants 2, 3 and 4 filed this revision petition, under Article 227 of the Constitution of India, assailing the decree and judgment, dated 28.12.2015, of the learned II Additional District Judge, Madanapalle, passed in CMA.No.25 of 2014.

1.1 By the said judgment, the learned Additional District Judge while dismissing the said civil miscellaneous appeal filed by the appellants-defendants 2 to 6 confirmed the order and decretal order dated 15.04.2013 of the learned Junior Civil Judge, Thamballapalle, passed in IA.no.168 of 2012 in OS.no.51 of 2012.

1.2 IA.No.168 of 2012 was filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Sections 94(E) and 151 of the Code of Civil Procedure, 1908, ('the Code', for short), requesting to grant a temporary injunction restraining the respondents-defendants 1 to 3 and their men, followers, agents and representatives from interfering with the plaintiff's peaceful possession and enjoyment of the Grcar dry lands of Ac.8.46 cents in S.No.176/2 and Ac.1.28 cents in S.No.171 of P.T.M Revenue village more fully described in item nos.1 and 2 of the schedule annexed to the plaint and petition.

2. I have heard the submissions of Sri S.V. Sundararajan, learned counsel appearing for the revision petitioners/defendants 2, 3 and 4, and of Sri T.V. Jaggi Reddy, learned counsel appearing for the 1st respondent/plaintiff. Respondents 2 and 3/defendants 5 and 6 are stated to be not necessary parties. I have perused the material record.

3. Before proceeding further, it is pertinent to note that the injunction petition was originally filed against the defendants 1 to 3, and the said defendants 1 to 3 resisted the temporary injunction application before the trial Court. The 1st defendant died during the pendency of the suit. His legal representatives were brought on record as defendants 4 to 6. The trial Court allowed the petition of the plaintiff as prayed for and made absolute, the interim injunction granted on 04.05.2012. Aggrieved thereof, the defendants 2 to 6 preferred the aforestated CMA. As already noted, the said CMA was dismissed. Hence, the defendants 2, 3 and 4 preferred this revision.

4. The parties shall hereinafter be referred to as the plaintiffs and the defendants for convenience and clarity.

5. The case of the plaintiff in support of the request for grant of a temporary injunction, in brief, is this:

The plaint schedule property originally belonged to one P. Obul Reddy, who is the father of the 1st defendant, Jayarami Reddy, (since died). The said Obul Reddy offered to sell the plaint schedule property to the plaintiff. The plaintiff and the said Obul Reddy entered into a contract of sale by fixing the following amongst other terms and conditions: (1) The total consideration payable is Rs.64,500/-; (2) The plaintiff has to pay Rs.27,216-00 as advance from out of the total sale consideration to the said vendor on the date of entering into agreement of sale by them; (3) The vendor has to execute a registered sale deed in favour of the vendee within three months from the date of agreement of sale, 30.03.1989; (4) On failure of the plaintiff, vendee, to pay the balance sale consideration within the stipulated time, the balance sale consideration is payable with interest at 12% per annum; and, (5) The vendor agrees to deliver possession of the agreement schedule properties to the vendee on the date of the sale agreement. With the above and other terms, the

agreement of sale was executed by the said vendor, Obul Reddy, in favour of the vendee/the plaintiff on 30.03.1989 after receiving Rs.27,216-00 from the plaintiff. A recital was also made in the said agreement with regard to the said payment. Balance of sale consideration is payable at the time of registration or on or before 31.12.1989. Possession was also delivered to the plaintiff on the date of agreement itself. The plaintiff has to obtain regular registered sale deed and pay the balance of sale consideration with interest at 12% per annum, on his failure to pay the balance sale consideration within the stipulated time. In fact the vendor, Obul Reddy, did not deliver possession of the entire agreement schedule property to the plaintiff and sought extension of time by two months to handover possession and the said fact was also endorsed on the reverse of the agreement on 29.12.1989. While so, the said Obul Reddy died leaving behind the 1st defendant herein. On 20.03.1992 the defendants 1 and 2 received part of balance of sale consideration of Rs.10,000/- from the plaintiff towards part payment and the said payment was also endorsed on the reverse of the sale agreement and possession of the agreement schedule property/plaint schedule property was delivered to the plaintiff. The defendants 1 and 2 made an endorsement that they would execute a regular sale deed in his favour, whenever the plaintiff requests. Thus, time is not the essence of the contract. The plaintiff is always ready and willing to perform his part of the contract. The sale agreement was executed by Obul Reddy by suppressing the fact that he had executed a registered gift deed on 19.01.1978 in favour of the 3rd defendant in respect of the very same agreement schedule property. The said gift deed is a sham and nominal document. This defendant questioned his vendor, Obul Reddy. The 3rd defendant, Obul Reddy and the defendants 1 and 2 also attested the sale agreement kharar executed in favour of the plaintiff on 17.08.1989 with the understanding to execute registered sale deed in favour of the plaintiff along with Obul Reddy. When the plaintiff was making demands to the defendants to

execute registered sale deed in his favour at his costs, the defendants postponed the execution of the sale deed by giving lame excuses. The plaintiff got issued a legal notice dated 29.03.2012 calling upon the defendants to be present on 05.04.2012 before the Sub-Registrar's Office, B.Kothakota. However, the State Government declared that day as a public holiday. The plaintiff once again got issued another legal notice dated 07.04.2012 calling upon the defendants to be present before the Sub-Registrar Office, Kothakota on 13.04.2012 and execute registered sale deed in his favour after receiving the balance sale consideration along with interest accrued thereon. The defendants 1 and 2 having received the legal notice failed to perform their part of the contract. Indeed this plaintiff attended before the Registrar's Office on 13.04.2012 and was present there between 10:00 AM and 05:00 PM along with the requisite money but the defendants did not turn up. The plaintiff is always ready and willing to perform his part of the contract. The contract is not repudiated by the defendants. The non judicial stamp papers purchased from the Sub-Registrar's Office, Kothakota, support the case of the plaintiff. Since the agreement schedule property was delivered by the defendants to the plaintiff, the plaintiff has been in continuous possession and enjoyment of the plaint schedule property without any interruption of any person including the defendants herein. His name is mutated in revenue record as cultivator of the agreement schedule property/plaint schedule property and his name is also entered in no.3 adangal and other records. The defendants are powerful and influential people in the village and they have got the support of antisocial elements whereas the plaintiff is a helpless person. The defendants and their men are trying to dispossess the plaintiff from the plaint schedule property in a highhanded manner without any manner of right. Such attempt was made one week prior to the institution of the subject suit. Since the plaintiff is unable to resist the highhanded attempts of the defendants, he filed the suit for specific performance and for an injunction

and the subject application for temporary injunction not to interfere with his possession pending final disposal of the suit.

6. The case of the defendants 1 and 2 as stated in the counter of the defendants 1 and 2 filed before the trial Court, in brief, is this:

The material allegations in the plaint and affidavit of the plaintiff filed in support of the petition are false. The allegation that the plaintiff is in possession of the plaint schedule property from the date of the sale agreement is not at all correct. The clause with regard to payment of interest was mentioned to infuse fear in the mind of the plaintiff and to make him abide by the clause in regard to payment of balance sale consideration within three months. As the plaintiff was prolonging the matter, the endorsements were made on 28.12.1989 and 20.03.1996. The said endorsements would go to show that time was stipulated for execution of the sale deed. The possession of the entire agreement schedule property was delivered is an allegation invented for the purposes of the suit. The contention that time is not the **essence** of the contract is also not correct. When the plaintiff is prolonging the matter and when issuance of a notice by the defendants was under contemplation, the plaintiff got issued the notice sensing the same. Even though time fixed for execution of the sale deed has elapsed, to be righteous, the defendants issued a reply notice stipulating date for execution of the sale deed provided the entire balance sale consideration is paid in full. Even within the stipulated date the sale deed was not obtained and the agreement stood repudiated. Thus the suit sale agreement is unenforceable as the relief of specific performance is time barred. After the plaintiff failed to obtain the sale deed by performing his part of the contract, the agreement was revoked and the defendants 1 and 2 donated Ac.3.50 cents out of item no.1 of the plaint schedule land for use as burial ground. The plaintiff has no subsisting rights in respect of the property under the suit sale agreement. The question of

the plaintiff being in possession of the property does not arise as the plaintiff lost his rights and the contract was repudiated. The allegations that the name of the plaintiff is mutated in revenue record and that his name is entered in the adangal etcetera are false. The revenue records on a plain perusal would show that the plaintiff managed the revenue authorities. There is no cause of action. The relief claimed in the suit is time barred. The plaintiff is not entitled to the equitable relief of temporary injunction. Hence the petition may be dismissed.

7. At the hearing before the trial Court, exhibits P1 to P9 and R1 to R6 were marked. No oral evidence was adduced on either side.

8. At the hearing learned counsel for the plaintiff while reiterating the case of the plaintiff *inter alia* submitted that the Courts below accepted that the plaintiff is in possession of two items of the plaint schedule property and held that the plaintiff has got *prima facie* case and that the balance of convenience is in favour of the plaintiff and that if no injunction is granted the plaintiff suffers serious and irreparable loss. He further submitted that in the facts and circumstances of the case, the plaintiff had satisfied all the required ingredients for granting a temporary injunction and that therefore, the order of temporary injunction was granted in favour of the plaintiff by the Courts below and that the concurrent findings of fact recorded by the courts below after appreciation of pleadings properly and the documentary evidence in proper perspective are justified and need no interference.

8.1 Per contra, the learned counsel for the defendants 2, 3 and 4 would submit that the trial Court and the lower appellate Court erroneously granted temporary injunction in favour of the plaintiff ignoring the fact that the plaintiff failed to perform his part and also the obligations under the agreement within the time stipulated in the contract of sale and that on the failure of the plaintiff

to obtain a sale deed by paying the balance of sale consideration in full, the agreement stood revoked and repudiated and that thereafter the defendants 1 and 2 donated Ac.3.50 cents of land from out of item no.1 of the plaint schedule property for use as burial ground and that therefore the question of plaintiff continuing in possession of the plaint schedule property does not arise for consideration and that the revenue records relied upon by the plaintiff are manipulated for the purposes of the suit and that the plaintiff failed to establish any of the ingredients required for granting a temporary injunction and that the Courts below ought to have seen that when the main relief for specific performance is barred by law of limitation, the plaintiff is not entitled to the equitable relief of temporary injunction.

8.2 Reliance was placed on the following decisions:

1. Chadalavada Krishna Murthy v. Vinod Baid¹
2. Sri Durga Kala Mandir v. S. Pulla Rao (died) per LRs²; and
3. Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira³

I have gone through the decisions.

In Chadalavada Krishna Murthy's case (1st supra), this Court held as follows:

'An injunction is, generally liable to be granted to prevent any possible injury likely to visit the party who moves such an application or to prevent injustice from being perpetrated by the opposite parties or to prevent miscarriage of justice. For seeking an injunction, a *prima facie* case is liable to be made out, and strong proof of the possible mischief should be brought out. At the stage of consideration of an injunction application, maintainability of the suit itself may or may not be gone into depending upon the facts and circumstances of the case. When there is no absolute bar under any statute, the civil Court would not be assuming at an interlocutory stage, generally, that it

¹ 2016(5) ALD 338 (DB)

² 2016(1) ALD 461

³ (2012) 5 SCC 370

would be lacking any jurisdiction to entertain the *//s*. Further, the issues involved in a case would not be examined in depth, at interlocutory stages, normally. Further, lack of jurisdiction in a civil Court is a mixed question of law and fact and hence collection of evidence is required.'

Sri Durga Kala Mandir's case (2nd supra) is relied upon in support of the proposition that the question of title can be gone into for deciding a *prima facie* case and that title is also one of the important factors to consider the balance of convenience.

Maria Margarida's case (3rd supra) is relied upon in support of the proposition that while dealing with an interlocutory application for temporary injunction, the Court while considering the pleadings must insist on documentary proof in support of the pleadings and that all the documents which come into existence after transfer of title or possession would be relevant.

9. Reverting to the facts of the case, it is trite to note that the plaintiff brought the suit for specific performance pursuant to an agreement of sale said to have been executed by Obul Reddy, the father of the 1st defendant (since died). According to the plaintiff, he paid 50% of the total sale consideration of Rs.64,500/- under the agreement of sale and the balance was agreed to be paid within the stipulated time and that he is also liable to pay the balance amount with interest at 12% per annum in case the balance amount is not paid within the stipulated time and that incorporating all these and the other terms and conditions agreed to between the plaintiff and his vendor, Obul Reddy, an agreement of sale, dated 30.03.1989, was executed and that the entire property was not delivered at the inception and that his vendor made an endorsement on the reverse of the agreement extending two months time for delivery of the property and that on the death of his vendor, Obul Reddy, the defendants 1 and 2, on 20.03.1982, received Rs.10,000/- from out of the balance of sale

consideration and made an endorsement and at that time the entire property was delivered and it was further agreed at that time that the registered sale deed will be executed whenever the plaintiff makes a request in that regard and that an endorsement was also made to that effect on the reverse of the sale agreement and that at the time of execution of the sale agreement, the fact that the vendor, Obul Reddy, executed a Gift deed in favour of the 3rd defendant was suppressed and that the said gift deed is a sham and nominal document and that having come to know of the gift deed, the plaintiff questioned Obul Reddy, his vendor, and an agreement kharar was executed in his favour on 17.08.1989 and that despite repeated demands the defendants failed to execute the sale deed in his favour and postponed the issue on one pretext or the other and that therefore a notice under the original of exhibit P1 was first issued calling upon the defendants to be present before the Sub-Registrar's Office on 05.04.2012 and that as that day was declared as a holiday another notice under the original of exhibit P4 was issued on 07.04.2012 demanding the defendants to be present before the Sub-Registrar's office on 13.04.2012 and that though the plaintiff waited at the sub-registrar's office with the requisite money from 10:00 AM to 05:00 PM, the defendants did not turn up and that when the defendants and their men tried to interfere with the possession of the plaintiff, the plaintiff brought the suit and filed the subject application for temporary injunction to protect his possession pending disposal of the suit. The plaintiff not only filed exhibits P1 and P4 but exhibit P2 pair of acknowledgment received from defendants 1 and 2; exhibit P3, the un-served postal cover addressed to the 3rd defendant besides exhibit P5 pair of acknowledgments received from PWs 1 and 2 in respect of exhibit P4 notice and exhibit P6, un-served covered received from the 3rd defendant relating to the second notice and also exhibit P7, non judicial stamp paper worth Rs.10-00 purchased on 13.04.2012 at the Sub-Registrar's Office, which support the case of the plaintiff that the demand was made for

obtaining sale deed as stated in his pleadings. He further exhibited exhibit P8, copy of pahani patrika for fasali 1420; exhibit P9, copies of adangals obtained through Mee-Seva for fasali 1422, which show his possession over item nos.1 and 2 of the plaint schedule properties. The said documents coupled with the pleadings of the defendants not only admitting the execution of the agreement but also the endorsements made on the agreement are sufficient to come to a safe conclusion that the plaintiff has established sufficient case and discharged the initial onus of proof which is upon the plaintiff. Coming to the documents exhibited in 'R' series; exhibit R1 is the true copy of record of rights, which on a perusal shows that the plaintiff is in possession of Ac.1.99 ¼ cents in S.No.176/2 by virtue of a sale; exhibit R2, the true copy of ROR, shows that the plaintiff is in possession of Ac.0.37 ½ cents + 1.78 cents in S.No.171 by way of sale transaction; exhibits R3 to R6 are copies of pahanies obtained through Mee seva; exhibit R3 is copy of adangal for fasali 1419 in respect of land in S.No.171/c showing possession of one P. Pedda Rami Reddy in respect of Ac.0.1250 cents; exhibit R4 is the copy of pahani of 1419 fasali and it shows that one Eswar Reddy is in possession of Ac.0.1150 cents in S.No.171/b; exhibit R5 is the copy of adangal relating to 1420 fasali disclosing that one Hemalata is in possession of Ac.0.0900 cents in S.No.171/a; exhibit R6 is the copy of pahani for 1420 fasali showing that Aswartha Narayana is in possession of Ac.1.0325 cents in S.No.171/d. The said documents do not substantiate the defence of the defendants in regard to gift of Ac.3.50 cents in item no.1 for use as a burial ground. The adangals in 'R' series show possession of 3rd parties in respect of certain extents of lands in S.No.171/a,b,c & d. The only contention of the defendants is that the suit agreement was revoked and repudiated and that the plaintiff is not in possession of the plaint schedule property. But on examination of the documents filed by the plaintiff in juxtaposition with the documents filed by the defendants, this Court is of the considered view that the well established

prima facie case of the plaintiff does not stand dislodged by either the defence pleaded or the documents exhibited on behalf of the defendants. Exhibits P8 and P9 particularly support the case of the plaintiff that the plaintiff was put in possession of the property; and, when once the plaintiff is able to prove that he is put in possession of the property and the defendants also admit the endorsements related thereto, unless some tangible evidence is produced that subsequently the plaintiff is dispossessed from the properties, the contentions of the defendants cannot be countenanced at this interlocutory stage. The contentions that the suit agreement is revoked or repudiated and it is barred by law of limitation have to be gone into at the appropriate later stage in view of the undisputed position that the said issues are mixed questions of fact and law and require adjudication after full fledged trial.

10. Viewed thus, this court finds that the well reasoned findings recorded by both the courts below while granting and sustaining the order of temporary injunction in favour of the plaintiff are sufficient to hold that the contentions of the defendants-revision petitioners are devoid of merit and that the revision is liable for dismissal. For all the above said reasons this Court holds that there is no irregularity, illegality or impropriety in the judgment of the Court below and that the Court below is justified in confirming the temporary injunction orders granted by the trial Court.

11. In the result, the Civil Revision Petition is dismissed.

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

M.Seetharama Murthi, J

17th January, 2017
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