

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.5764 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/defendant aggrieved by the order dated 29.09.2016 in C.M.A.No.6 of 2016 passed by IV Additional District Judge, Kadapa, wherein the learned Judge confirmed the temporary injunction granted by the Senior Civil Judge, Kadapa in I.A.No.425 of 2016 in O.S.No.87 of 2016.

2) The parties are referred as they were arrayed in the suit before the trial Court.

3a) The respondent/plaintiff filed the suit for permanent injunction contending that suit schedule property is their ancestral property and during oral partition in the year 1999 it was allotted to him and since then he was in possession and enjoyment of the same. He contended that mutation was also effected in the revenue records and pattadar pass book and title deed were issued in his favour. After partition he developed the property by digging borewell and raised crops by taking crop loans from the bank and defendant has nothing to do with the same. He further contended that the defendant in order to grab the property demanded him to sell the suit property, for which he refused and hence he bore grudge against him. The defendant along with his henchmen tried to interfere with the property. Hence the suit by plaintiff. Along with the suit, the plaintiff filed a petition for temporary injunction.

b) The defendant contested the matter and denied that the suit property is ancestral property; oral partition was made in the year 1999 and that the suit

property was allotted to plaintiff. He contended that suit property is a DKT land assigned to him on 15.06.1986 vide DKT No.93/96 Patta No.752, Khatha No.84 and Tahsildar also issued pattadar pass book and title deed to him. Taking advantage of loss of DKT patta, the plaintiff misrepresenting the facts got mutated his name in the revenue records. Against which he carried the matter in appeal before the RDO, Kadapa who by order dated 03.02.2016 directed the Tahsildar, Khajipet to delete the entries. The plaintiff suppressing the same filed the suit and he has no prima facie title over the suit property. He thus prayed to dismiss the petition.

c) During the enquiry, Exs.P1 to P11 were marked on behalf of plaintiff and Exs.R1 and R6 were marked on behalf of defendant. The trial Court considering the material on record granted temporary injunction in favour of plaintiff.

d) Aggrieved, the defendant preferred C.M.A.No.6 of 2016 before the IV Additional District Judge, Kadapa, wherein the learned Judge having observed that appellant/defendant has not filed original or duplicate DKT patta or copies of pattadar pass books to show that earlier the defendant was granted pattadar pass book in his favour and accordingly, dismissed the appeal by confirming the temporary injunction order passed by Senior Civil Judge, Kadapa.

Hence the CRP by defendant.

4) Heard arguments of Sri Polisetti Radha Krishna, learned counsel for petitioner/defendant. Though notice to respondent/plaintiff was served but none appeared on his behalf.

5) Learned counsel for petitioner/defendant would argue that originally the petitioner was granted DKT patta in respect of suit land and he mortgaged the said land to a bank and there the patta was misplaced and thereafter the revenue authorities issued duplicate DKT patta on 08.02.2017. Be that as it may, taking undue advantage of misplacement of his patta the respondent/plaintiff got mutated his name in the revenue records and unduly claimed the suit land. The petitioner/defendant filed appeal before the RDO, Kadapa and by order dated 03.02.2016 the RDO directed the Tahsildar, Khajipet to delete the entries standing in the name of respondent/plaintiff. Instead of filing appeal before the Joint Collector, respondent/plaintiff filed the suit with false averments and obtained injunction which is unsustainable. He would staunchly argue that Courts below without considering the truth in the facts that patta of the petitioner/defendant was misplaced and later duplicate patta was issued in his favour, erroneously granted interim injunction in favour of respondent/plaintiff. He thus prayed to allow the revision and set aside the interim injunction granted by the Courts below.

6) The point for determination in this CRP is:

“Whether there are merits in the CRP to allow”

7a) **POINT:** The parties are own brothers and bone of contention is Ac.1.06cts. of land situated in Sy.No.1250/4 in Dumpalagattu Village,

Khajipet Mandal. While the respondent/plaintiff claims that suit schedule property is their ancestral property and during oral partition in the year 1999 the said land was allotted to him, the petitioner/defendant denied the same and claims that suit schedule land is DKT patta land assigned to him on 15.06.1986 vide DKT No.93/96, Patta No.752, Khatha No.84.

b) It is trite law that interim injunction can be granted in favour of a party upon establishing his lawful possession over the suit schedule property as on the date of filing the suit and upon further establishing *prima facie* case, balance of convenience and irreparable loss.

c) Applying the above principles when the record is perused, Ex.P1 shows that pattadar pass book was issued in favour of respondent/plaintiff on 28.07.1994 in respect of suit schedule land covered by Sy.No.1250/4 and some other land. Similarly, Ex.P2—1-B Namuna (ROR), Ex.P3—Adangal Pahani and Ex.P4—Encumbrance Certificate all would show the name of the respondent/plaintiff as pattadar of suit schedule property. Ex.P4 shows that the respondents/plaintiff mortgaged the suit land to Cheemulapalli PACS Limited in the year 2002. Ex.P11—receipt dated 19.06.2015 shows that the respondent/plaintiff purchased seeds from A.P.State Seeds Development Corporation Limited for the suit land. Thus, all the documents particularly Ex.P1—pattadar pass book, would clinchingly show that respondent/plaintiff is the pattadar in respect of suit schedule land and he has been enjoying the suit schedule property by the date of filing of the suit. It is his case that petitioner/defendant has been meddling with the suit

property without any semblance of right. Thus, he has established *prima facie* case and balance of convenience in his favour.

8) Coming to the claim of the petitioner/defendant, it is his case that DKT patta was issued to him in respect of suit schedule property on 15.06.1986 vide DKT patta 93/96, Patta No.752, Khatha No.84 and when he mortgaged the same in favour of a bank which is unnamed, the patta was misplaced and therefore, he obtained duplicate patta and taking advantage of the misplacement of the patta the respondent/plaintiff got mutated his name in the revenue records and later on appeal by the petitioner/defendant, RDO in his order dated 03.02.2016 directed the Tahsildar, Khajipet to delete the entries standing in the name of respondent/plaintiff and record the petitioner/defendant as pattadar of the suit land.

9) In this context, a perusal of Ex.R3 order in Ref. No. H/955/2015 dated 03.02.2016 would show that the RDO, Kadapa observed that as per RSR of Dumpalagattu Village, Khajipet Mandal Sy.No.1250/4 in an extent of Ac.4.03 cts. was originally classified as patta land stood in the name of Surabhi Venkata Subbadu and no records were available in the office of Tahsildar, Khajipet showing grant of DKT patta in favour of petitioner/defendant; the petitioner/appellant was claiming that he was granted DKT patta in respect of said land; no entries were made in the RSR with regard to grant of DKT patta to the petitioner/appellant. He further observed that the Tahsildar, Khajipet erred in issuing pattadar passbook and title deeds without verifying the title and possession and enjoyment of the

land. Ultimately he held that since it was recorded as private patta land as per RSR, it was expedient for the petitioner/appellant to get the title declared from the competent civil court and then approach the revenue authorities for further reliefs of effecting mutation and till then the entry in pattadar pass book and title deed of the respondent/plaintiff in respect of land in Sy.No.1250/4 in an extent of Ac.1.06 cts. is to be deleted.

a) Thus, in the above order, the RDO did not give any finding in favour of petitioner/defendant but made an observation that since as per RSR the land in question was recorded as private patta land standing in the name of Surabhi Venkata Subbadu, both parties shall approach the civil court for vindication of their right in respect of suit land and then approach the revenue authorities. It appears basing on the said order, the name of the respondent/plaintiff was deleted in revenue records in respect of the suit land which is evident from Ex.R1. Be that as it may, respondent/plaintiff approached the civil court and filed the present suit and he also filed an appeal before the Joint Collector and the same is pending. As already stated supra, the record shows that till before filing of the suit, the suit land was recorded in his name.

10) In the light of above facts, the correctness of the claim of either party can be decided only after full fledged trial. So far as interim injunction is concerned, since the suit land was recorded in the name of the plaintiff till before filing of the suit, the trial Court and appellate Court rightly found *prima facie* case and balance of convenience in his favour and granted

interim injunction. As observed supra, the record shows that respondent/plaintiff once mortgaged the suit land in favour of PACS Limited, Cheemulapalli village and he also purchased seeds for the suit land from A.P.State Seeds Development Corporation Limited which shows his *prima facie* possession. No doubt, in this revision, petitioner/defendant filed photostat copy purported to be the duplicate patta said to be issued to him on 08.02.2017 and original patta said to be issued to him on 15.06.1987. However, the same cannot be considered for the reason that it is only a photostat copy and further, as per the observation of RDO in Ex.R3, suit land was originally recorded as private patta land standing in the name of one Surabhi Venkata Subbadu and there were no records available in the office of Tahsildar showing DKT patta was issued in favour of petitioner/defendant. In the light of said observation the photostat copy of duplicate patta cannot be given any credence.

11) Thus, on a conspectus of facts and evidence, the orders passed by the trial Court and appellate Court in granting interim injunction in favour of respondent/plaintiff cannot be said to be illegal. There are no merits in the CRP and accordingly the same is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.06.2017
Murthy