

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1884 OF 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 23.03.2015 in C.M.A.No.16 of 2014 on the file of the Court of the III Additional District Judge, Tirupati.

2. The contention of the learned counsel for the petitioner is two fold: (1) the appellate Court restricted the interim injunction in respect of Ac.1.07 ½ cents even though the petitioner purchased an extent of Ac.1.11 cents under Ex.P.1 – sale certificate; and (2) the remedy available to the respondent herein is to file a separate suit for declaration.

3. *Per contra*, learned counsel for the respondent submitted that the petitioner purchased an extent of Ac.1.11 cents, but he filed the suit for permanent injunction in respect of an extent of Ac.1.58 cents. He further submitted that there is no illegality or irregularity in the order of the appellate Court, which warrants interference of this Court.

4. The facts leading to filing of the present petition are briefly as follows:

One C.N.Rajaram purchased an extent of Ac.0.57 cents in Survey No.339 and Ac.0.64 cents in Survey No.338/2A totalling 1.21 cents under a registered sale deed dated 21.01.1988 from Thipparaju Krishnakumari. The said Rajaram borrowed money from State Bank of India, ADB, Chandragiri, by mortgaging the

property. The said Rajaram failed to repay the amount. Having no other alternative, the State Bank of India filed a suit and obtained decree. The petitioner herein purchased an extent of 0.47 cents in Survey No.339 and Ac.0.64 cents totalling Ac.1.11 cents in Survey No.338/2A in a Court auction. The concerned Court issued a sale certificate on 12.06.2002 (Ex.P.1) in favour of the petitioner. The possession was delivered to the petitioner as per the orders in E.A.No.310 of 2002 in E.P.No.45 of 2000.

While so, the petitioner herein filed O.S.No.202 of 2013 on the file of the Court of the Additional Senior Civil Judge, Tirupati, against the respondent seeking perpetual injunction in respect of the suit schedule property. Along with the suit, the petitioner filed I.A.No.259 of 2013 seeking ad-interim injunction. The trial Court granted ad-interim injunction in favour of the petitioner on 01.08.2014.

5. Feeling aggrieved by the orders of the trial Court, the respondent herein filed C.M.A.No.16 of 2014 on the file of the Court of the III Additional District Judge, Tirupati. The learned III Additional District Judge allowed the said C.M.A. in part by restricting the interim injunction to an extent of Ac.1.07½ cents and vacated the interim order to the extent of Ac.0.03½ cents. Feeling aggrieved by the orders of the appellate Court, the petitioner preferred the present revision.

6. It is an admitted fact that the petitioner herein purchased an extent of Ac.0.47 cents in Survey No.339 and Ac.0.64 cents in Survey No.338/2A in a Court auction. It is the case of the petitioner that the respondent is interfering with the suit schedule

property without any right whatsoever. It is the case of the respondent that she purchased an extent of 650 square yards from C.N.Rajaram under an agreement of sale dated 12.11.1990, which was culminated into a registered sale deed dated 20.12.1990.

7. As rightly pointed out by the learned counsel for the petitioner, establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioner is *sine qua non* to grant an interim injunction. It is a settled principle of law that a person, who approached the Court seeking equitable relief, must come to the Court with clean hands.

8. It is not in dispute that C.N.Rajaram purchased an extent of Ac.1.21 cents under a registered sale deed dated 21.01.1988. Out of which, the petitioner purchased an extent of Ac.1.11 cents only. The petitioner is not claiming right over the remaining extent of Ac.0.10 cents purchased by C.N.Rajaram. In paragraph No.15 of the impugned order, the appellate Court made an observation that the petitioner filed the suit seeking perpetual injunction in respect of an extent of Ac.1.58 cents even though he purchased an extent of Ac.1.11 cents.

9. Learned counsel for the petitioner submitted that the appellate Court has not properly considered the material available on record with reference to the documents placed by both the parties.

10. In order to appreciate the rival contentions, it is apposite to refer the pleadings in the plaint. The petitioner is claiming the title over the suit schedule property basing on Ex.P.1- sale certificate.

It is not out of place to extract hereunder the schedule annexed to the plaint:

“Chittoor District, Chandragiri Sub-district, Agrala Grampanchayat, No.64, Agarala village accounts, S.No.339, Dry, Ac.0.47 cents and S.No.338/2A, Dry Ac.0.47 cents and S.No.338/2A, Dry, Ac.0.64 cents, in total Ac.1.11 cents, apart from it constructed Power Loom Industry i.e., RCC building measuring 45 x 25 feet approximately and also another zinc sheet roofing sheds 2 measuring 25 x 35 feet and another small shed measuring 15 x 20 feet approximately with electrical service connection No.313, door, door framers, windows, and a well with motor pump set and also the mango trees and coconut trees and other trees raised for the maintaining the climate of the lock industry which is bounded with barbed wire fencing of total extent with support pillars (stone) and an ingress and outgress from the factory to the main road proceeding to Tirupati to Chittoor, and also the machinery of power looms installed therein, within the following boundaries:

- East - Land belongs to O.Balasubramanyam Chetty and others;
- West - Land belongs to the plaintiff and his wife Anasuyamma;
- North - Road;
- South - Check dam.”

As per the schedule, the petitioner/plaintiff is claiming injunction to an extent of Ac.1.58 cents. As observed earlier, the petitioner purchased an extent of Ac.1.11 cents only. The appellate Court rightly considered the plaint schedule and confined the interim junction to Ac.1.07 ½ cents only. Relevant Paragraph No.25 reads as follows:

“Land owned and possessed by C.M.Rajaram in S.No.339 of Agarala village is Ac.0-57 cents as per Ex.R-2. But as per Ex.R-4

C.M.Rajaram sold 650 square yards i.e., Ac.0-13.54 cents from out of Ac.0-57 cents in S.No.339 to respondent on 20-12-1990 i.e., prior to creation of equitable mortgage in the year 1993. C.M.Rajaram has got only Ac.0-43.46 cents in S.No.339 as on the date of creation of equitable mortgage deed in favour of State Bank of India, ADB Branch, Chandragiri. The total extent of land owned by C.M.Rajaram as on the date of creation of equitable mortgage comprised in S.No.339 and 338/2A is only Ac.1-07½ cents (Ac.1-07.46 cents). But somehow C.M.Rajaram created equitable mortgage in respect of Ac.1-11 cents.”

11. The petitioner having purchased Ac.1.11 cents, is not entitled to seek ad-interim injunction in respect of an extent of Ac.1.58 cents. This aspect was not considered by the trial Court. It appears that while allowing the injunction petition, the trial Court has not seen the schedule annexed to the plaint. It is not in dispute that the respondent herein purchased an extent of 650 square yards. In such circumstances, the petitioner is not entitled for interim injunction in respect of the entire extent of the plaint schedule property. There is no proper explanation on the part of the petitioner why he has shown excess land in the plaint schedule.

12. The appellate Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the appellate Court. There is no illegality or irregularity in the order of the appellate Court, which warrants interference of this Court by exercising the jurisdiction under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

14. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 16.02.2017
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