

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4231 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 16.06.2017, passed in C.M.A.No.16 of 2016 on the file of the Senior Civil Judge, Puttur, wherein the Court set aside the order dated 21.04.2016 passed in I.A.No.797 of 2015 in O.S.No.133 of 2015 on the file of the Principal Junior Civil Judge, Puttur, and granted temporary injunction in favour of the respondent herein over the plaint schedule property, till the disposal of the suit.

2) For the sake of convenience the parties hereinafter will be referred to as arrayed in the suit.

3) The facts in issue are as under:-

The plaintiff submits that the plaint schedule property consisting of two items i.e., land to an extent of Ac.0.94 cents in Sy.No.11/5 and an extent of Ac.0.55 cents in Sy.No.13/6 of Simharajapuram village, Palasamudram Mandal, which were originally declared Government poramboke lands. As the plaintiff is a small farmer and a landless poor, he occupied the same about 30 years back and made it fit for cultivation. Further, the plaintiff claimed to

have applied for DKT patta, for which the then M.R.O., after conducting physical enquiry issued DKT patta and later issued pattadar pass book and title deed, but unfortunately, the said original pattadar passbook and title deed got destroyed due to white ants eating away them. However, basing on the Xerox copies, his name was mutated in all the revenue records. He further submits that he dug an in-well bore in Sy.No.11/5 and obtained electric service connection in the name of his son. The defendant, who is a relative of the plaintiff is said to be causing troubles by interfering highhandedly with the possession of the plaintiff apart from threatening the plaintiff with dire consequences, with a view to dispossess the plaintiff from the plaint schedule property. It is further stated that on 06.09.2015 at about 9.30 a.m., when the plaintiff was ploughing the plaint schedule property, the defendant along with his followers highhandedly entered into the plaint schedule property and threatened him with dire consequences. The plaintiff is said to have thwarted the illegal attempts with a great difficulty. The defendant is said to have openly proclaimed that he would come again and dispossess the plaintiff. In view of that situation, the plaintiff filed the suit seeking permanent injunction. Pending the said suit, the plaintiff also filed I.A.No.797 of 2015 under Order 39 Rules 1 and 2 of C.P.C. for grant of ad-interim injunction against the defendant.

4) A counter came to be filed by the defendant denying the averments made in the affidavit filed in support of the petition. It is stated in the counter that the plaintiff is his elder brother and the defendant had purchased land in Sy.No.12 adjacent to Ac.1.28 cents from the plaintiff and his son through registered sale deed dated 21.11.2005. It is stated that later on, the defendant took steps for mutation of his name in all the revenue records in respect of the schedule property. It is also stated that there is no *prima facie* case and balance of convenience in favour of the plaintiff. After considering the rival submissions, the trial Court dismissed the said I.A. holding that the land is a government land and without verifying the previous records, the Tahsildar mutated the name of both parties in the revenue records and issued pattadar pass book and title deed in the name of both the parties. Challenging the same, the plaintiff filed C.M.A.No.16 of 2016.

5) During the course of hearing of the appeal, the plaintiff pleaded that the trial Court failed to consider the documents filed on behalf of the plaintiff and also did not appreciate the same properly. By its judgment dated 16.06.2017, the learned Senior Civil Judge, Puttur, allowed the appeal and granted temporary injunction. Challenging the same, the present Civil Revision Petition is filed.

6) Heard learned counsel for the petitioner, learned counsel appearing for the respondent and perused the record.

7) It is to be noted that while considering an application for grant of injunction, the Court will only take into consideration the basic elements in relation thereto, viz., existence of a *prima facie* case, balance of convenience and irreparable injury.

8) In *Skyline Education Institute (Pvt.) Ltd., v. S.L. Vaswani and another*¹ the Apex Court held that once the Court at first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate Court will be loath to interfere simply because on a *de novo* consideration of the matter it is possible for the appellate court to form a different opinion on the issues of *prima facie* case, balance of convenience, irreparable injury and enquiry. Unless the appellate Court comes to the conclusion that the discretion exercised by trial Court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, there will be no warrant for exercise of power.

9) Keeping in view the principles of law laid down by the Apex Court in dealing with the cases of temporary injunction, I shall proceed to deal with the case on hand.

¹ AIR 2010 SC 3221 (1)

10) It is to be noted that the plaintiff mainly relied upon Exs.P1 and P2 namely DKT pattas issued in his name in the year 1998. He also relied on Ex.P3-IB Namoon, in respect of plaint schedule property issued during the year 2015, which shows the name of the plaintiff as a pattadar. It is also to be noted here that the defendant himself admits, land being in possession of the plaintiff. Though he contended that the plaintiff and his son expressed their intention to give the petition schedule property to the defendants, since they were in financial crisis, a "panchayat kararnama" was reduced into writing to that effect, but failed to produce the said "panchayat kararnama", which is said to have been executed by the plaintiff in his name, in the year 2005. It is to be noted that the plaintiff did not admit the said "kararnama" or sale of property. The record *prima facie* discloses that the property has been assigned to plaintiff and he is in possession of the plaint schedule property, which was admitted by the defendant himself. In a suit for injunction, the issue which needs to be considered is as to who is in possession of the property as on the date of filing of the suit. The findings given by the lower appellate Court and the material referred to above *prima facie* show that the plaintiff is in possession of the property. Under those circumstances, the order of the appellate Court warrants no interference and the Civil Revision Petition is liable to be dismissed.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.09.2017

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