

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.5007 of 2017

ORDER

Aggrieved by the order passed in I.A.No.142 of 2017 in O.S.No.148 of 2017 by the Special Assistant Agent to the Government and Sub-Divisional Magistrate (Mobile Court), Bhadrachalam, dated 22.08.2017, directing both the parties to maintain *status quo* during previous crop season, the present revision is filed.

2. The petitioner, who was unsuccessful before the Court below, filed a petition under Rule 42(A) and (C) of A.P.Agency Rules, 1924 (for short 'the Rules'), claiming temporary injunction during pendency of the suit, alleging that he is the absolute owner, possessor and pattadar of land to an extent of Acs.5-40 cents in Sy.No.15/3 situated at Gangolu Revenue Village of Dummugudem Revenue Mandal, Bhadradri-Kothagudem District. Originally, the land was acquired by the grandfather of petitioner and it became ancestral property. After the death of grandfather, the petitioner had succeeded the said property. The Settlement Officer, Rajahmundry, took the case on file in Case No.3531, enquired into the matter and allowed settlement patta for the petition schedule property vide order dated 22.09.1976 in favour of petitioner and his name was mutated in revenue records and thus, he is in possession and enjoyment of the property without any interruption by anybody as on the date of filing of the petition. Since the respondents are making attempts to interfere with the possession, petitioner filed suit along with a petition

claiming interim injunction before the Court below and the same was dismissed.

3. The respondent filed counter denying the material allegations while asserting that he is in possession and enjoyment of the petition schedule property and denying the possession of petitioner and his ownership etc., and sought for dismissal of the petition.

4. The Court below, upon hearing argument of the counsel for petitioner and respondent, passed the impugned order, wherein it is noted in paragraph 4 that a report is called for from the Tahsildar to ascertain ground realities regarding physical possession and enjoyment particulars by conducting field enquiry for just disposal of I.A.No.142 of 2017. Accordingly, a report was called for from the Tahsildar, Dummugudem. As per the said report in RC.No.B/289/2017 dated 17.08.2017, the respondent/defendant is in physical possession and enjoyment of the petition schedule property. On the strength of the report, the order under challenge was passed directing the parties to maintain *status quo* as in previous crop season. The order was passed on 22.08.2017. The previous crop season was ended by May, 2017.

5. The main contention raised before this Court by the counsel for petitioner, Sri P. Vishnuvardhana Reddy, is that calling for report from the Tahsildar is unwarranted while deciding the application for grant of interim injunction filed under Rule 42(A) & (C) of Rules and that passing of order to maintain *status quo* during previous crop

creates confusion as to who is in possession of the property. Therefore, he placed reliance on the judgment of this Court in **Maloth Veeru @ Heerala and others V. Guguloth Mangi**¹, wherein it was held that calling for report from the Tahsildar is illegal and the Court is entitled to decide the matter in accordance with law, but not based on the report of the Tahsildar and therefore, the order passed by the Court below is erroneous.

6. The counsel for respondent contended that the order impugned is in accordance with law since several questions with regard to title and possession have to be decided during trial and at this stage, it is difficult to grant temporary injunction in favour of petitioner and therefore, the order impugned cannot be interfered with by this Court while exercising power under Article 227 of Constitution of India and he supported the order in all respects.

7. Considering rival contentions and on perusal of the material available on record, the point that arises for consideration is,

Whether the order passed by the Court below directing the parties to maintain status quo prevailing during previous crop season based on the report of the Tahsildar is legal, if not, liable to be set aside?

¹ 2012(2) ALD 455

8. **POINT**

The petition is filed under Rule 42(A) & (C) of the Rules claiming temporary injunction during pendency of the main suit filed for grant of perpetual injunction. Rule 42(A) & (C) of the Rules is identical to Order 39 Rules 1 and 2 CPC and that the Court, while deciding the application under Rule 42(A) & (C) of Rules and under Order 39 Rules 1 and 2 CPC, is required to record a finding as to *prima facie* case, balance of convenience and irreparable loss, and if the petitioner is in possession and enjoyment of the property and establishes all the three requirements, which are *sine quanon* for granting temporary injunction, the Court can grant temporary injunction during pendency of the suit. Here, foreign procedure has been adopted by the Court below calling for a report from Tahsildar, Dummugudem, to find out as to who is in possession of the property. Issuing such direction directly without any application under Order 26 Rule 9 CPC by the parties, is nothing but collection of evidence to find out as to who is in possession. It is settled law that parties cannot be allowed to take assistance of the Tahsildar to prove their possession and a Commissioner cannot be appointed to collect evidence. Similar question came up before this Court in **Maloth Veeru @ Heerala's** case, referred supra, wherein this Court held that calling for report from the Tahsildar to elicit his opinion regarding physical possession of suit property and placing reliance upon it, is a serious jurisdictional error. If the principle laid down in the above judgment is applied, the order passed by the Court below is illegal

and contrary to the law laid down by this Court in the above referred case.

9. The Court below, instead of discussing the requirements for grant of temporary injunction during pendency of the suit, took the assistance of Tahsildar and called for a report without any application filed by any of the parties to the suit. Therefore, passing of order based on Tahsildar's report as to the physical possession and directing the parties to maintain *status quo* without deciding as to who is in possession of the property is a serious irregularity and therefore, the order passed by the Court below is liable to be set aside and is accordingly set aside.

The point is answered accordingly.

10. In the result, the Civil Revision Petition is allowed, setting aside the order impugned. However, the matter is remanded to the Court below with a direction to decide the petition in accordance with law after following due procedure and ignoring the report of the Tahsildar, afresh, within one month from the date of receipt of a copy of this order. No order as to costs.

11. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

17th November, 2017

Note:
Issue CC by 21.11.2017

sj