

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3457 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 28.02.2017 passed by the VI Additional District Judge, Siddipet, in C.M.A.No.8 of 2016, whereby the learned Judge dismissed the appeal confirming the order dated 08.02.2016 passed by the Principal Junior Civil Judge, Siddipet, in I.A.No.770 of 2015 in O.S.No.220 of 2015, which was filed under Order XXXIX Rules 1 and 2 of CPC to grant temporary injunction.

It is the case of the petitioner that she filed O.S.No.12 of 2006 on the file of Junior Civil Judge, Siddipet, for partition of the property into 5/16 shares and allotment of one such share to her and accordingly, a preliminary decree was passed. Later, a final decree was passed by order dated 10.12.2008 in I.A.No.552 of 2007 (Ex.P1) dividing the property by metes and bounds and allotting her share i.e., the schedule property. Later, she filed E.P. and obtained delivery of possession under delivery receipt - Ex.P4. Ex.P3 is the panchanama dated 31.03.2010 drafted at the time of delivery of possession to her in the year 2010 and she is in exclusive possession and enjoyment of the property since the date of delivery of agricultural land. Claiming that the respondents are trying to interfere with her possession, the petitioner filed O.S.No.220 of 2015 for permanent injunction and also filed I.A.No.770 of 2015 under Order XXXIX Rules 1 and 2 of CPC for temporary injunction.

The respondents filed counter in the petition contending that the delivery of property was only a paper delivery and they were not aware about the proceedings and that apart they are in possession and enjoyment of the suit schedule property. They got marked Exs.R1 to R10.

Upon hearing of argument of both the counsel, considering the rival contentions, the trial Court disbelieved the contention of the petitioner and dismissed the application.

Aggrieved by the said order, the petitioner preferred C.M.A.No.8 of 2016 on the file of VI Additional District Judge, Siddipet, which ended in dismissal by order dated 28.02.2017 affirming the findings recorded by the trial Court, disbelieving the possession as on the date of filing of the suit.

Challenging the concurrent findings recorded by both the Courts below, the present revision is filed.

The lower Appellate Court ignored the documents, more particularly, the panchanama and delivery receipt marked as Exs.P3 and P4 which would establish that possession of the suit schedule property was delivered to the petitioner and in the absence of proof that she was dispossessed subsequently the petitioner is deemed to be in possession and that apart, the failure to mutate the name of the petitioner is not a ground since she applied for mutation of her name by letter dated 10.03.2011 to the Tahsildar, Siddipet Mandal. Therefore, failure to produce any documentary evidence itself is not a ground to dismiss the application.

During hearing Smt.S.A.V.Ratnam, learned counsel for the petitioner, would contend that the petitioner obtained delivery of

possession in pursuance of the decree obtained by her after partition of the schedule property and in the absence of any proof that she was dispossessed from the property on any subsequent date of Exs.P3 and P4, she is deemed to be in possession and it is difficult for her to prove effective possession since the property is an agricultural land. Therefore, dismissal of the application by the trial Court, which was affirmed by the lower Appellate Court on the ground that she failed to prove her lawful possession on the date of filing of the suit and application, is ex facie illegal. She also contended that mutation of her name, in the revenue record is not a title and the decree passed by the trial Court will prevail over the revenue record. As per the order and decree in O.S.No.12 of 2006, the petitioner is the owner of the suit schedule property and she is in possession and enjoyment of the same by virtue of Exs.P3 and P4. As the respondents are interfering with her possession, the petitioner is entitled to temporary injunction during the pendency of the suit and therefore, she prayed to allow the revision by setting aside the orders passed by both the trial Court and the lower Appellate Court granting temporary injunction during pendency of the suit.

Considering the rival contentions and on perusing the material available on record, the point that arises for consideration is :-

“Whether the petitioner is entitled to temporary injunction during the pendency of the suit O.S.No.220 of 2015 on the file of Principal Junior Civil Judge, Siddipet”?

POINT :- It is the case of the petitioner that she is in lawful possession and enjoyment of the property from the date of delivery

of property as per Ex.P3 panchanama dated 31.12.2010. No doubt, Exs.P3 and P4 *prima facie* shows that the possession of the property was delivered on 31.12.2010 but the present suit was filed in the year 2015 alleging that she is in lawful possession and enjoyment of the property and that the respondents are interfering with her possession and enjoyment of the property.

No doubt, the basic requirements for grant of temporary injunction are *prima facie* case, balance of convenience and irreparable loss. Besides the three requirements, the petitioner must establish that she is in possession and enjoyment of the property so as to grant an order restraining the respondents from interfering with her possession.

In the instant case, the contention of the petitioner is that possession of the property was delivered to her on 31.12.2010 under Exs.P3 and P4, and thereafter, she was not dispossessed. But, the contention of the respondents is that the delivery is only a paper delivery and not actual delivery. In such a case, the petitioner has to prove her lawful possession on the date of filing of the suit and application, to enable this Court to exercise its discretion under Order XXXIX Rules 1 and 2 CPC since the relief under Order XXXIX Rules 1 and 2 CPC is purely equitable in nature. If really the petitioner took delivery of possession of the property on 31.12.2010, her name would have been mutated either in No.3 or 2 Adangal i.e., pahanies of the village. The village account No.2 would show the actual cultivation of the property and No.3 pahanies would also disclose as to who is paying the land revenue to the Government. If really the petitioner is in possession and enjoyment of the property from the date of Exs.P3 and P4, she

would have atleast pay land revenue to the Government and cultivated the land and her name would have been entered in the village cultivation account, which clinchingly establish the possession as on the date of filing of the petition. But the petitioner allegedly applied for mutation of her name by application dated 10.03.2011 and the revenue authorities did not take any action on her application. Mere submission of the application without pursuing the same would not serve any purpose and the finding of the trial Court, as affirmed by the lower Appellate Court, that the petitioner was not in possession of the property as on the date of filing of petition is a fact finding and such finding cannot be interfered with by this Court while exercising jurisdiction under Article 227 of the Constitution of India, which is limited.

When the petitioner filed the application under Order XXXIX Rules 1 and 2 CPC, it is for her to substantiate her contention by positive evidence. The revenue records produced by the respondents would *prima facie* establish that they are in possession of the suit schedule property as on the date of filing of the suit. On the other hand, the petitioner did not produce iota of evidence to establish her possession. In such a case, the balance of convenience tilts in favour of the respondents and not in favour of the petitioner.

The other documents filed by the petitioner would show that she obtained delivery of possession of the property but that would not be sufficient to establish that she was in possession and enjoyment of the property in the year 2015. On the other hand, Exs.R1 to R10 would establish *prima facie* that the respondents are in possession and enjoyment of the property.

The word '*prima facie* case' is not defined anywhere but the Court has to find out whether the petitioner is able to establish any arguable case or a good case to go for trial, in **Ms. Julien Educational Trust v. Sourendra Kumar Roy and others**¹ it was held that '*prima facie* case' means "which has to go to trial". Similarly, in **Allappuzha Municipality v. T.J. Paul**² it was held that "the Court should consider whether there is a bona fide contention between the parties or a serious question to be tried." It is undoubtedly clear that there is a clear and detail case for the revision petitioner to go for trial and the Court can accept that there is '*prima facie* case'.

In another judgment in **United Commercial Bank v. Bank of India**³, the Apex Court is of the view that while considering an application under Order XXXIX Rules 1 and 2 CPC unless the plaintiffs establish that they had a *prima facie* case, meaning thereby that there was a "bona fide contention between the parties or a serious question to be tried", the Court cannot grant injunction under Order XXXIX Rules 1 and 2 CPC, the relief is purely a discretionary and equitable.

So far as balance of convenience is concerned, as discussed in the earlier para, in view of the documents produced before this Court, balance of convenience is in favour of the respondents, thereby the petitioner is not entitled to claim temporary injunction.

The third requirement is that sustaining irreparable injury in case no injunction is granted. Here, the petitioner allegedly claimed to be in possession and enjoyment of the property but she

¹ 2010(1) ALT 58 (SC)

² AIR 1995 Kerala 36

³ AIR 1981 SC 1426

failed to establish *prima facie* case and lawful possession as on the date of filing of the suit and the application. In the absence of proof of her *prima facie* case and lawful possession as on the date of filing of suit and application, the question of sustaining irreparable loss or injury to her would not arise.

Therefore, the petitioner failed to establish any of the three basic requirements which are essential to grant injunction in an application filed under Order XXXIX Rules 1 and 2 CPC. Consequently, both the trial Court and the lower Appellate Court rightly concluded that the petitioner is disentitled to claim the relief of temporary injunction, which is purely discretionary in nature and such a finding cannot be interfered with by this Court while exercising power under Article 227 of the Constitution of India since such power is limited. Hence, I am unable to reverse the concurrent findings recorded by the trial Court and the lower Appellate Court to grant temporary injunction during the pendency of the suit. Consequently, the revision is devoid of merits and liable to be dismissed.

In the result, the revision is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

JULY 20, 2017

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