

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.2249 of 2016

ORDER :

This Civil Revision Petition is filed challenging the order dt.05.01.2016 passed in Civil Miscellaneous Appeal No.36 of 2014 on the file of III Additional District Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad reversing the order dt.21.03.2014 in I.A.No.459 of 2012 in O.S.No.232 of 2012 on the file of Junior Civil Judge, Ranga Reddy District, at Hayathnagar, Cyberabad.

2. This Civil Revision Petition had been earlier disposed of on 13.06.2017 directing the parties to maintain *status quo*, pending disposal of the suit O.S.No.232 of 2012.

3. On a Review Petition I.A.No.1 of 2017 [Review CRP.MP.No.5784 of 2017] filed by respondent nos.1 to 5 and 7, the said order was set aside on 26.02.2019 relying on the decision of this Court in **Chirapareddi Veeramma and others vs. Sk. Mahaboob Subhani and others**¹, and the Civil Revision Petition was restored to the file of the Court.

4. Heard Sri P. Sri Harsha Reddy, counsel for petitioner and Sri M.S.R. Shashi Bhushan, counsel for respondent.

5. The petitioner in the present Civil Revision Petition is plaintiff in the suit O.S.No.232 of 2012 on the file of Junior Civil Judge, at

¹ 1991 (1) A.L.T. Pg.366

Hayathnagar, Ranga Reddy District. He filed the said suit against the respondents for a perpetual injunction restraining the respondents from interfering with his alleged peaceful possession and enjoyment of the suit schedule property.

CONTENTIONS OF PETITIONER

6. Petitioner contended that he is the absolute owner and possessor of the suit schedule property; that his name is also recorded in the Revenue Records as pattadar and possessor and he was also issued pattadar pass book and title deed. He contended that along with one G. Venkat Reddy he jointly purchased Acs.09.26 gts of land in Survey No.180 and 187 of Bagh Hayathnagar Village under two registered sale deeds being Document Nos.4854 of 2004 and 4814 of 2004 dt.24.03.2004; that he and the said G. Venkat Reddy partitioned the said properties equally among them and he was allotted Acs.4.33 guntas in the said Survey Numbers; that the respondents are strangers to the plaint schedule property and they had tried to dispossess him on 10.12.2012 and 12.12.2012.

7. Along with the suit, he also filed I.A.No.439 of 2012 under Section XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 reiterating the contentions raised in the plaint and stating that he was in peaceful possession and enjoyment of the suit schedule property and the same may be protected by grant of temporary injunction.

CONTENTIONS OF RESPONDENTS

8. Counter was filed by respondent nos.2, 3, 4, 6 and 7 opposing the grant of temporary injunction to the appellant.

9. It was the contention of respondents that the suit is not maintainable and that the suit schedule land was not available for sale as on the date of the execution of the alleged sale deeds in favour of the petitioner and Sri G. Venkat Reddy; that petitioner therefore cannot claim any ownership or possession of the land; that the ancestors of vendors of petitioner obtained a layout in 1982-83 and converted the agricultural land in the said Survey Numbers into (101) plots and then sold the plots to various purchasers from 1983-86, and put them in possession; and the said purchasers are in actual physical and vacant possession of the said plots.

10. They contended that the vendors of petitioner and Sri G. Venkat Reddy did not have any land which they could have alienated to petitioner and Sri G. Venkat Reddy on 24.03.2004; that the vendors of petitioner colluded with each other and filed O.S.No.387 of 1997 for partition before the Principal Senior Civil Judge, Ranga Reddy District, and fraudulently got recorded a Memorandum of Compromise suppressing the factum of selling of total land in Survey Nos.180 and 187 after converting the same into plots to the respondent no.6 and to others, and also suppressing the factum of pendency of O.S.No.455 of 2000 before the IV Additional Senior Civil Judge, Ranga Reddy District which was filed by one Jella

Bikshapaiah and his two cousins, viz., Jella Pentaiah and Mallesh against some of the purchasers of the plots; that suppressing the conversion of the suit schedule subject land into residential plots, petitioner misrepresented that it is still agricultural land and obtained pattadar pass books without the knowledge of the prospective purchasers only with an intention to occupy the land; that petitioner did not succeed in his attempt to dispossess the purchasers from the respective plots; and he therefore, brought into existence the sale deeds and is trying to set-up title over the land.

11. They contended that the application I.A.No.970 of 2000 filed for temporary injunction in O.S.No.455 of 2000 by the vendors of petitioner against the petitioners of plots before the IV Senior Civil Judge, Ranga Reddy District was dismissed on 16.02.2006, and the vendors of petitioner then set-up the petitioner to file the instant suit; that respondent nos.1 to 7 and several others had purchased the plots and are in actual physical vacant possession and enjoying the same as absolute owners. Respondent no.6 himself claimed to have purchased plot No.88, admeasuring 203 Sq.Yds. under a registered sale deed dt.11.08.1983.

12. Before the Junior Civil Judge, at Hyathnagar, Cyberabad, the petitioner filed Exs.P.1 to P.28 while the respondents filed Exs.R.1 to R.31.

THE ORDER DT.21-3-2014 IN I.A.NO.459 OF 2012

13. By order dt.21.03.2014, the Trial Court dismissed I.A.No.459 of 2012 in O.S.No.232 of 2012 directing the parties therein to maintain *status quo* till disposal of the case.

14. The Trial Court held that though the Pahani filed by the petitioner showed his name for the year 2004-10, he is not entitled to interim injunction since the respondents filed Exs.R.1 to R.4 – Sale Deeds of plots executed in the year 1987, 1984, 1983 showing that respondents purchased the plaint schedule property through General Power of Attorney holder executed by one Bikshapaiah, who is also the petitioner's vendor much prior to the sale deed obtained by the petitioner in 2004. It observed that Bikshapaiah and others executed a General Power of Attorney Ex.R.1 in favour of one Ailoo, S/o. Sailoo in the year 1983 being registered Document No.160 of 1983, and acting on the said General Power of Attorney, the suit schedule property was sold away to various vendors including the respondents, pending the suit.

15. It also observed that respondents had got themselves impleaded as defendant nos.8, 13, 19, 20, 23 and 35 in O.S.No.455 of 2000, the suit filed by petitioner's vendors for perpetual injunction against some of the such purchasers, and that it is still pending. It observed that when such a suit is already pending, no relief can be granted to petitioner in the present I.A.

16. It also observed that when legal heirs of Jangamaiah, Krishna and Mallesh filed suit for partition in the year 1997 against Bikshapaiah, Krishna, Jangamaiah, Mallesh they had suppressed the transactions that took place between Bikshapaiah and others.

ORDER DT.5.1.2016 IN C.M.A NO.36 OF 2014

17. Assailing the said *status quo* order, the respondent nos.1 to 5 filed Civil Miscellaneous Appeal No.36 of 2014.

18. By order dt.05.01.2016, the said appeal was allowed and the order of the Trial Court passed in I.A.No.459 of 2012 in O.S.No.232 of 2012, was set aside.

19. The lower appellate court held that the ownership of the suit schedule property originally was with J. Krishna and J. Mallesh and others who are the vendors of the petitioner; that respondents had raised the plea that the suit schedule property had been converted into non-agricultural land during 1981-83, and had even filed regd. sale deeds of the plots purchased by them and so the burden was on the petitioner to establish that the suit schedule property continued to be agricultural property and was not converted into non-agricultural land.

20. It observed that though the Revenue Records would establish *prima facie* case of possession they would not establish the title of petitioner to the schedule property and the respondents had, in fact, disputed Exs.P.1 to P.28 *in toto* and their genuineness is to be decided at the time of trial. It observed that since the respondents claim that

the property was converted into non-agricultural land in the year 1982-83, these documents would become questionable documents.

21. It then referred to the documents filed by the respondents, and in particular Ex.R.31, which is a photo-copy of a layout and held that the said document shows that the plaint schedule property was converted into house plots and layout was made way back in the year 1982-83. It observed that petitioner did not file single document in the Court including a third-party affidavit to disprove the above fact.

22. It observed that since sale deeds were executed by the General Power of Attorney holder of the real owners, possession of the property must also have been delivered to the respondents, and so the respondents are in possession of the suit schedule property from the date of delivery of possession. It stated that the petitioner did not file any document to say that the respondents were dispossessed from the schedule property after the execution of the sale deeds in their favour, and he had approached the Court suppressing the real facts.

23. Assailing the same, the present Civil Revision Petition is filed.

THE CONTENTIONS OF THE PARTIES IN THE CRP

24. The counsel for petitioner sought to contend that the order passed by the lower Appellate Court cannot be sustained. He stated that he had filed ample documentary evidence in the form of Exs.P.1 to P.28, and the same ought to be believed and injunction should be granted in favour of petitioner by allowing I.A.No.459 of 2012. He also contended that O.S.No.387 of 1997 filed among the vendors of

petitioner for partition was compromised and I.A.No.970 of 2000 in O.S.No.455 of 2000 filed by the vendors of petitioner before the II Additional Senior Civil Judge, Ranga Reddy District was dismissed on the ground that steps were not taken to bring on record the legal representatives of 9th respondent therein. He contended that the petitioner having purchased the property along with G. Venkat Reddy on 24.03.2004 is deemed to be in possession, and he is entitled to grant of temporary injunction, pending suit.

25. The Counsel for the respondents refuted the above contentions and supported the order passed in the CMA.

THE CONSIDERATION BY THE COURT

26. I have noted the contentions of both sides.

27. Since the present Civil Revision Petition has been filed under Article 227 of the Constitution of India, it is important to know the scope of interference with findings of fact in the exercise of Revisional jurisdiction by this Court under Article 227 of the Constitution of India.

28. In **Celina Coelho Pereira (Ms) and others v. Ulhas Mahabaleshwar Kholkar and others**², the Supreme Court held that the High Court cannot, in the case of exercise of its jurisdiction under Article 227 of the Constitution convert itself into a Court of Appeal and that the legislature has not conferred a right of appeal and review of the decision of the sub-ordinate Court or Tribunal finally on facts.

² (2010) 1 S.C.C. Pg.217

It also reiterated that the power of Judicial superintendence under Article 227 must be exercised sparingly and only to keep sub-ordinate courts and Tribunals within the bounds of their authority, and not to correct mere errors.

29. In **Jai Singh and others vs. Municipal Corporation of Delhi and others**³, the Supreme Court held that in exercise of jurisdiction under Article 227 of the Constitution of India, the High Court cannot lightly or liberally act as an Appellate Court and re-appreciate evidence. It cannot substitute its own conclusions for the conclusions reached by the courts below and power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. It observed that it cannot be exercised to correct all errors of judgment of a Trial Court acting within the limits of its jurisdiction, and can only be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

30. In the instant case, both the Trial Court as well as the Lower Appellate Court, after considering the material on record doubted the *bona fides* of the petitioner.

31. Both the Courts have concurrently found that respondents have purchased plots forming part of the plaint schedule between 1983-87 from the General Power of Attorney holder, viz., Ailoo S/o. Sailoo of

³ (2010) 9 S.C.C. 385

the original owners Bikshapaiah and others appointed under Ex.R1. Both the Courts have held that the land had been converted into non-agricultural land, that possession of the land must be with the purchasers, i.e., respondents and others and the vendors of petitioner filed a collusive partition suit O.S.No.387 of 1997 for partition before the Principal Senior Civil Judge, Ranga Reddy suppressing about the sale of the plots in the plaint schedule property, and without impleading the purchasers therein entered into as Compromise. They have also taken note of the pendency of O.S.No.455 of 2000 filed by the vendors of petitioner against the respondents and others, and also the fact that I.A.No.970 of 2000 filed in O.S.No.455 of 2000 for temporary injunction was dismissed on 16.02.2006 by the IV Senior Civil Judge, Ranga Reddy District and concluded that the petitioner was set-up by the respondents to file the instant suit after the said event.

32. When the entire land claimed by petitioner is *prima facie* shown to have been converted into house plots in the year 1982-83 under Ex.R.31, *prima facie*, it cannot be said that petitioner has *prima facie* title or possession thereof.

33. In my opinion, the concurrent findings of fact given by the Trial Court as well as the lower Appellate Court are based on appreciation of evidence and record and do not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

34. Accordingly, the Civil Revision Petition fails, and it is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-04-2019

Ndr/

