

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2509 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India by the petitioner/plaintiff challenging the order dated 21.04.2017 in I.A.No.111 of 2017 in I.A.No.19 of 2017 in O.S.No.141 of 2017 passed by the V Junior Civil Judge, City Civil Court, Hyderabad, whereby declined to order restitution of property.

2. The petitioner filed suit for perpetual injunction along with an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short 'CPC'). The Court granted interim order directing both parties to maintain *status quo* on 23.01.2017. On 06.02.2017 the same was extended till 06.05.2017. While the matter stood thus, the police Panjagutta subjected the petitioner to harassment, thereupon he filed W.P.No.4775 of 2017 before this Court, where this Court directed the police not to visit the suit schedule property. Subsequently, the said writ petition was disposed of with a direction permitting the police to proceed with the investigation in accordance with law. During investigation, the petitioner was arrested and remanded to judicial custody on 02.03.2017 and released on bail on 10.03.2017. After obtaining bail, when the petitioner reached his house, the respondents are found in possession of the property. As he

was forcibly disposed by the respondents, sought restitution of property by exercising power under Section 144 of C.P.C.

3. During enquiry, no witnesses were examined and no documents were marked.

4. Upon hearing argument of both counsel the trial Court held that in the absence of varying or reversing the order passed by the Court, the Court cannot exercise the power under Section 144 of C.P.C. to order restitution of possession and thereby declined to pass any order in favour of the petitioner.

5. Aggrieved by the order passed by the trial Court, the present revision petition is filed on various grounds mainly on the ground that when an interim order of *status quo* was passed and subsisting, dispossession of the petitioner would amount to violation of the Court order. When the respondent took possession forcibly, the petitioner is entitled for restitution under Section 144 of C.P.C. But the trial Court did not consider this contention in proper perspective and hence, requested this Court to order restitution under Section 144 of C.P.C. by setting aside the order passed by the trial Court.

6. Undisputedly, the suit was filed along with I.A.No.19 of 2017 and obtained *status quo* order, which was extended till 06.05.2017, but the Panjagutta police allegedly subjected the petitioner to harassment. Thereupon, he was constrained to file W.P.No.4775 of 2017 and initially, this Court directed the Panjagutta police not to visit the schedule property. However,

at the end, this Court permitted the Panjagutta police to proceed with the investigation in accordance with law. As a part of investigation, the police arrested the petitioner and remanded him to judicial custody on 02.03.2017 and was released on bail.

7. The contention of the learned counsel for the petitioner is that the petitioner was forcibly disposed by the respondents and in such a case, he is entitled for restitution. The *status quo* order passed by the trial Court is silent as to who is in possession of the property by the date of passing such order. The order of *status quo* passed by the trial Court, without recording as to who is in possession of the property, has not been challenged by the petitioner, but got extended the same from time to time till 06.05.2017. Hence, the said order attained finality. In the absence of any finding as to who is in possession it is difficult to hold that he was in possession and dispossessed from the schedule property by the respondent.

8. That apart, power under Section 144 of CPC can be exercised only in case where a decree or an order is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or

modified, and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order. In the present case the order passed by the Court is neither reversed, varied nor modified after dispossession of petitioner from the property, in such a case the question of restore does not arise.

9. An identical question came up before this Court in **Cheni Chenchaiiah v Shaik Alli Saheb and others**¹ where a suit for permanent injunction was filed, an interim injunction granted ex parte, but later vacated. Before filing appeal, defendants dispossessed plaintiff from suit premises forcibly, appeal was filed against the order of dismissal of interim injunction petition and allowed, temporary injunction granted pending disposal of suit so far, restored. The possession cannot be restored to the parties by exercising power under Section 144 of CPC and held that in view of the fact that the respondents/defendants have forcibly and unauthorisedly evicted the petitioner/plaintiff and had thrown out his belongings from the suit premises, as alleged by the petitioner, but the petitioner was not evicted in pursuance of order of the Court, therefore, Section 144 of CPC is not strictly applicable to the facts of the case.

10. Here also the petitioner sought for relief only under Section 144 of CPC though the decretal order passed by this Court was not varied or set aside or reversed by the appellate Court or in revision

¹ 1993(2) ALT 517

and that apart the petitioner was not dispossessed in pursuance of the order or decree. In such a case Section 144 of CPC cannot be invoked. Therefore, the trial Court rightly concluded that the petitioner is not entitled to claim restoration under Section 144 of CPC.

11. At the end of arguments, learned counsel for the petitioner requested the Court to permit the petitioner to file appropriate application before the trial Court. Hence, liberty is given to the petitioner to file such application before the trial Court, advised.

12. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

06.06.2017
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