

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.870 OF 2017

ORDER:

The order granting police protection in I.A. No.27 of 2017 in I.A. No.43 of 2016 in O.S. No.16 of 2016 on the file of Principal Junior Civil Judge, Bodhan, is challenged under Article 227 of the Constitution of India.

2. In the present Civil Revision Petition, the revision petitioner is the defendant in the suit and incidentally respondent in I.A. No.43 of 2016, in which an injunction order was passed by the learned Principal Junior Civil Judge, in regard to which police protection was sought by the respondent/petitioner/plaintiff.

3. The said order was passed on 7.2.2017 filed under Section 151 of the Code of Civil Procedure (for short, 'the Code'), reasons assigned while seeking police protection by the respondent herein were to protect the petition schedule property and the standing crop. It is clear from the order that the petitioner herein has not filed counter, but however, contested the petition.

4. In order to appreciate the submissions made by both parties in the present Revision Petition and the standard of proof, which is required to have the benefit of police aid by a party, it would be appropriate to extract the relevant portion of the order.

“8. The contention of the petitioner is that he inherited the property from his mother being the only son and got his name mutated in revenue records he was issued with pattadar pass book, title deed by revenue authorities. From the date of mutation his name is being reflected. Ex.A1 is the original pattadar pass book issued in favour of plaintiff which shows the title and possession of plaintiff with respect to petition schedule property. Ex.A2 and A3 are the latest pahnies which are reflecting the plaintiff both in ownership and possessor columns Ex.A4 is the identify card issued to plaintiff by PACCS, Renjal mentioning the title deed No. and Patta No. He was issued urea on the petition schedule property for his cultivation activity the petitioner got his name mutated vide Ex.A5 which the mutation proceedings issued by MRO and Ex.A6 original 13 b certificate which is the basis for issuance of Ex.A5. Ex.A5 regularize the transaction of transfer between the defendant and mother of plaintiff. It reveals that mother of petitioner has purchased the petition schedule property from the defendant under registered document and paid the deficit stamp duty of Rs.4350/- u/s. 5A(4) of A.P. ROR, pathadar pass books Act along with challan number through which the mother of petitioner paid the deficit stamp duty. Ex.A9 is the original title deed of the petitioner. The property had been legally transferred to petitioner and relevant entries were made in revenue records and petitioner was issued with pattadar pass book and title deed and that he is also member of PACCS and getting urea. The membership card also discloses the petition schedule property along with patta No. The series of documents which wife filed by petitioner clearly proved that as on the date of the filing of suit he is in lawful possession of petition schedule property and also that he has prima facie case.

9. On the other hand defendant pleaded that petition schedule property is his ancestral property and he inherited the same and been in continuous possession of the same. He relied upon Ex.B1 and B2 which are the certified copies of pahnies showing the name of defendant in ownership and possessory column. Other than those defendant had not filed any revenue records to show the title of the defendant. The same principle had been laid in **“2001 (5) ALD 102 between Mahendra C. Mehta and others Kousalya v. Co-op. Housing Society Ltd., Hyderabad. The Hon’ble High Court of A.P. held that “entries in revenue records do not confer any title on the person whose name is entered nor they extinguish the right of the real owner. It is relevant to discuss a citation in Yeluri Vijaya Bharate and other Yeluri Manikyamma and others in 1998 (2) ALT 623 which discusses the purpose of revenue entries. The Hon’ble apex Court held that “Record of rights are not the record of document of title and the entries therein are not to be taken as the basis to fix the title and the purpose of documents to ensure the person to be made liable to pay the revenues and for no other purpose. Therefore Ex.B1 and B2 does not bename a document of title in absence of any corroboration of documents.**

10. In view of the above discussion, this Court holds that the petitioner had made out prima facie case and balance of convenience in his favour and would suffer irreparable loss if injunction is refused and petition is entitled for temporary injunction.

In the result, petition is allowed granting temporary injunction in favour of petitioner restraining respondent from interfering with the possession of petition schedule property.”

5. Heard Sri T. Sujan Kumar Reddy, learned counsel for the petitioner and Smt. Pulipati Radhika, learned counsel for the respondent.

6. The submission of the learned counsel for the petitioner is that the Court below was not right in according police aid for the reason that the Court below has observed that the petitioner is interfering with, and on the other hand he is apprehending the interference and, thus, the statements are inconsistent and, therefore, the Court should not have resorted to granting police aid.

7. Further submission of the learned counsel is that the order is bereft of reasons.

8. Yet another submission is that the respondent/plaintiff has been working as Government employee in the Police Department belonging to the same village and under the guise of order of police aid he is trying to take possession of the property, which is not in his possession.

9. Still further, the learned counsel for the petitioner submits that the Court below, somehow, overlooked the guidelines laid down by the Division Bench of this Court, which are to be applied before granting police aid and the respondent/plaintiff had not availed the remedies under Civil Procedure Code i.e., under Order 22 Rule 32 of C.P.C. and Order 39 Rule 2A of C.P.C. seeking attachment or arrest

of violation of the orders of the Court and the Court below had considered the guidelines, certainly, would not have granted the relief.

10. It is also his submission that I.A. No.27 of 2017 seeking police protection was filed on 27.1.2017 and the order was passed on 7.2.2017 i.e., within ten days from the date of filing of the application, without affording an opportunity to file counter, and, therefore, sought to set aside.

11. Per contra, learned counsel for the respondent would contend that despite affording an opportunity, the petitioner has not chosen to file counter and since there was standing crop on ground and the circumstances where such police aid was absolutely indispensable the Court below having satisfied with the requirements has granted police aid. Thus, she supports the order of the Court below under challenge contending that there is no patent illegality warranting interference and, therefore, sought to dismiss the petition.

12. In order to substantiate their respective submissions, the learned counsel for the petitioner placed reliance in **Polavarapu Nagamani v. Parchuri Koteswara Rao**¹ whereas the learned counsel for the respondent placed reliance on a decision of learned single judge of this Court in **Bijiga Papa Rao v. Jonnalagadda Srinivasa Rao**². Admittedly, what has been stated by the learned counsel for the

¹ 2010 (2) ALD 41 (DB)

² 2015 (2) ALD 171

petitioner that the order was passed within ten days is borne out by the record.

13. Now, the question is whether chance was afforded to the revision petitioner to file his counter.

14. It is no doubt true, adequate chances cannot be afforded where the relief is emergent, but, however, it does not mean that the Court should be very conservative, without giving a reasonable opportunity of being heard to ventilate resistance to the request made by opposite party. To examine this particular aspect, nothing is forthcoming on record.

15. In **Polavarapu Nagamani** (1 supra), Hon'ble Division Bench of this Court laid down guidelines for grant of police aid in paragraph-24, thus:

“24. Of late, this Court has noticed that the number of suits for injunctions (classified as title suits) in all the Courts is on increase. It is not without truth to say that more often than not frivolous suits of injunction are filed only to bring the defendants around the plaintiff's view and accept the same via- media arrangement to avoid long drawn, expensive and time consuming proceedings in the Courts, during which the defendants would not be able to enjoy the property with peace. In all such cases, ordinarily, urgent motion is moved before the civil Court, an order of *ex parte* injunction is obtained and waiting for a period of fortnight or so, immediately application is moved under Section 151 of CPC seeking police protection. Instances are not rare where defendants are subjected to harassment after obtaining order of injunction. The Courts in India have repeatedly held that the police have no role in civil adjudication, and therefore, the Courts should be very very cautious and vigilant not to introduce police intervention in civil adjudication in indirect manner at the instance of a clever and resourceful plaintiffs. In view of this, we direct all the civil Courts in the State of Andhra Pradesh to exercise abundant caution in dealing with interlocutory applications filed by the party obtaining an order of injunction seeking police protection. For the guidance of all the civil Courts, we hold and lay down as under.

(i) When the allegations are made by the party obtaining an order of injunction, that the said order has been

violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of CPC seeking attachment and/or arrest of the violator for contempt of the Court.

(ii) When a petition is filed seeking police protection, whether or not to exercise of power under Section 94(e) or Section 151 of CPC, the facts alleged or pleaded. An order for police protection cannot be passed in a routine manner.

(iii) If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty rights of the opposite party.

(iv) The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities. Be it noted, as held by Supreme Court in *Chottu Ram v. Urvashi Gulati*, (2001) 7 SCC 530 and *Anil Ratan Sarkar v. Hirak Ghosh*, (2002) 4 SCC 21, in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self-serving statements of the party seeking the intervention of the Court.

16. Be that as it may, when the order is perused, which is extracted in the above, *ex facie* it does not satisfy the requirement for granting police aid which is absolutely bereft of reasons, the standard of proof that is required to grant police aid and at what stage and under what circumstances, such a relief can be granted were not at all examined by the Court below.

17. Therefore, it is desirable to set aside the order under challenge so as to afford an opportunity to the revision petitioner to file counter and to tender arguments. Besides, the Court below is to examine the request in the light of the submissions that would be made and applying the guidelines laid down in **Polavarapu Nagamani** (1 supra), Civil Revision Petition is allowed setting aside the order

under challenge restoring I.A.No.27 of 2017 to its file. The revision petitioner is directed to file counter on 31.3.2017. Both parties are directed to cooperate with the Court for disposal of the Interlocutory Application No. 27 of 2017 within a fortnight from 31.3.2017. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Revision Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 24.03.2017

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