

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1546 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful plaintiff assailing the orders, dated 05.01.2017, of the learned Additional District Judge, Vizianagaram, passed in CMA.No.18 of 2015.

2. Be it noted that the learned Principal Junior Civil Judge, Vizianagaram, *vide* order and decretal order, dated 10.08.2015, in IA.No.1121 of 2014 in OS.No.272 of 2014 granted a temporary injunction in favour of the plaintiff and against the defendants restraining them from interfering with items 1 to 3 of the plaint schedule properties.

3. However, the learned Additional District Judge while allowing the afore-said CMA of the defendants had set aside the order and decretal order granting temporary injunction in respect of the item no.1 of the plaint schedule property while confirming the said order in other respects and further directed the trial Court to dispose of the suit without being influenced by the observations in the judgment passed in the afore-stated CMA.

4. I have heard the submissions of *Sri Gudapati Venkateswara Rao*, learned counsel for the revision petitioner-plaintiff, and of *Sri A. Jagannatha Rao*, learned counsel for the respondents-defendants. I have perused the material record

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5.1 The case of the plaintiff in support of the request to grant temporary injunction, in brief, is as follows: - 'He is the absolute owner

of the wet lands viz., Ac.0.30 cents in Sy.No.181/ 1; Ac.0.05 cents in Sy.No.185/ 18; and, Ac.0.06 cents in Sy.No.185/ 19 of Duppada Village more fully described in the schedule annexed to the plaint. Originally, one Korada Ramaswamy and his brothers are the absolute owners of the above said properties and other landed properties in the same village. By virtue of oral understanding and partition affected between the said brothers, the plaint schedule properties along with some other lands fell to the share of Ramaswamy. The oral partition was recognized by the revenue authorities and pattadar pass book and title deed book were issued in favour of the wife of Ramaswamy, Smhachalam, as Ramaswamy died after such oral partition. On such mutation of the properties in her name, she was paying taxes to the revenue department. While so, the plaintiff purchased the plaint schedule properties from the said K. Smhachalam, w/o. late Ramaswamy and her children for valuable consideration under a registered sale deed, dated 26.12.2013. From the date of the said purchase the plaintiff is continuing in peaceful possession and enjoyment of the said lands. Prior to the plaintiff, his vendors/predecessors in title enjoyed the said properties being in possession and as absolute owners. The plaintiff is also paying taxes on the properties from the date of his purchase and is continuing in exclusive possession and enjoyment of the plaint schedule landed properties without any hindrance from anybody including the defendants. Some misunderstandings arose between the vendors of the plaintiff and the defendants. With a view to wreck vengeance against the vendors of the plaintiff, the defendants threatened to trespass into the plaint schedule property under a false claim that they have got right in the plaint schedule properties. On 08.10.2014, the defendants along with their supporters came to the schedule land and tried to trespass

into the same. However, with the timely resistance of the plaintiff and his men, the defendants could not succeed in their illegal attempts. While leaving the schedule property, the defendants proclaimed that they will not allow the plaintiff to enjoy the plaint schedule properties in a peaceful manner and that they would again come and forcibly trespass into the property at any time and that nobody on earth can prevent them from trespassing into the plaint schedule properties. The defendants have no manner of right, title and interest or possession whatsoever over the plaint schedule properties and their attempts are only illegal attempts intended to achieve their oblique motive. They are lawless persons. The plaintiff is an innocent person and is not in a position to successfully resist the illegal attempts that may be made each and every time by the defendants. He has got strong *prima facie* case. The balance of convenience is also in his favour. If no injunction is granted, he would suffer serious and irreparable loss.'

5.2 While denying the material allegations in the affidavit of the plaintiff filed in support of the petition, the defendants urged in their counter as follows: - 'Korada Chinnayya, Korada Jatlayya and Korada Ramaswamy are the sons of Korada Appalaswamy. The 1st defendant is the wife and the defendants 2 to 5 are the sons of Chinnayya. Late Smhachalam is the wife of late Ramaswamy. K. Jatlayya is alive. The schedule properties along with other properties were purchased by Chinnayya under two registered sale deeds, respectively, dated 14.07.1955 and 17.03.1960; and, ever since the purchase of the said properties, Chinnayya has been in peaceful possession and enjoyment of the same till his death without any let or hindrance from anyone including his two brothers and their family members. Chinnayya died in the year 1998. After his death, his properties devolved upon the

defendants who are his wife and sons. They are in continuous peaceful and uninterrupted possession and enjoyment of all the properties covered by the above mentioned sale deeds including the plaint schedule properties. Chinnayya purchased the properties with his self acquisitions. Therefore, his brothers have no rights whatsoever in the said properties. Hence, the legal heirs of the brothers of Chinnayya also have no rights whatsoever over the properties acquired by Chinnayya including the plaint schedule properties. The revenue authorities issued pattadar pass book and title deed books in favour of Chinnayya in the year 1994. The title deed and other documents were burnt down in a fire accident that occurred in the house of the defendants in the year 2007 and to the said effect the office of MRO and fire department issued certificates. Thus, K. Chinnayya is the owner of the above mentioned properties including the plaint schedule properties and the brothers of Chinnayya and their legal heirs are estopped and precluded from claiming any share in the said properties, which are covered by the said two sale deeds and which were acquired by Chinnayya during his life time. Chinnayya, during his life time, along with his sons, who are defendants 2 to 5, raised paddy crop in the said lands and on his death, all the defendants came into possession and enjoyment of the plaint schedule properties, which are self acquired properties of Chinnayya. They alone have absolute right, title and interest over the plaint schedule properties. While so, the defendants came to know that one of the vendors of the plaintiff, that is Smhachalanam, w/o.late Ramaswamy illegally managed to obtain pattadar pas book and got her name mutated in the revenue records in respect of the plaint schedule properties and other properties over which Smhachalam or her husband or her legal heirs have no rights whatsoever. Immediately thereafter the

1st defendant presented a grievance letter, dated 08.09.2014, to the District Collector, Vizianagaram, and requested to rectify the entries in the revenue records by duly incorporating her name and deleting the name of Smhachalam; but, the said grievance is not taken for consideration. The 1st defendant filed an application, dated 25.09.2014, before the Tahasildar, Vizianagaram Mandal, to furnish the details as to on which and what basis the land of an extent of Ac.0.44 cents covered by Sy.No.181/1 and other lands are mutated in the name of Smhachalam; and, sought specific particulars as to the issuance of pattadar pass book etcetera in the name of said Smhachalam. However, no information was furnished to the 1st defendant. The vendor of the plaintiff colluded with the revenue authorities and mischievously obtained the pattadar pass book and title deed book and got incorporated her name in the revenue records with a view to cause wrongful loss to the defendants and make a gain for themselves. In the circumstances, the plaintiff has no right, title and interest or possession over the plaint schedule properties and the sale deed, dated 26.12.2013, under which the plaintiff has purchased the plaint schedule properties does not confer any right, title and interest on the plaintiff over the plaint schedule property and it does not also extinguish the rights of the defendants over the said properties. Such sale deed has no sanctity as the vendor, who executed the sale deed, has no title or right to sell the properties. Suppressing the facts, the suit is filed. The plaintiff is not entitled to any relief much less the relief claimed in the petition. The petition is liable to be dismissed.'

6. At the time of enquiry before the trial Court, no oral evidence was adduced but exhibits P1 to P5 and R1 to R10 were marked.

7. As already noted, the trial Court allowed the petition of the plaintiff as prayed for and granted a temporary injunction in favour of the plaintiff and against the defendants. However, the lower appellate Court partly set aside the said order insofar as item no.1 of the plaint schedule properties.

8. Both the learned counsel made submissions in line with the respective pleadings of the parties.

9. Learned counsel for the plaintiff specifically contended as follows:

The lower appellate Court wrongly relied upon exhibits R11 to R13 which are subsequent to the filing of the suit and erroneously set aside the well considered order of the trial Court insofar as item no.1 of the suit properties. Exhibits R11 to R13 which are subsequent documents have no evidentiary value and the lower appellate Court ought not to have considered the same. The lower appellate Court ought to have seen that the revenue department has no power to issue pattadar pass book and title deed book in favour of different people at different times in respect of the same land without following the due procedure and the said issuance of pass books and title deed books in favour of different people at different times is absolutely illegal and such documents, which are later obtained are not valid documents. Any rectification of revenue entries under Record of Rights Act and Pattadar Pass Book Act shall be only in accordance with the provisions of the Act. However, the lower appellate Court came to its own conclusions without properly appreciating the facts and the legal position. Hence, the order of the lower appellate Court may be set aside and the order of the trial Court may be confirmed in all respects.

10. On the other hand, learned counsel for the defendants supported the orders of the lower appellate Court by stating that exhibits R11 to R13, which are filed before the lower appellate Court as additional evidence, are copy of RTI application, copy of 1(B) register and booklet of 1(B) register, which are authenticated public documents, and that, therefore, the well reasoned order of the lower appellate Court does not warrant interference. He would further submit that as already a direction is given to dispose of the suit, no prejudice would be caused to both the parties and that the ends of justice would be met if the order is confirmed and the trial Court is directed to dispose of the suit as directed in the orders of the lower appellate court.

11. I have given earnest consideration to the facts and submissions. The relationship between the parties and their elders is admitted. Ramaswamy and Chinnayya are brothers is not in dispute. The plaintiff contends that Smhachalam is the wife of Ramaswamy and that in a partition amongst the brothers of Ramaswamy, the plaint schedule properties and other properties fell to the share of Ramaswamy and that the property was mutated in the name of Smhachalam, w/o. Ramaswamy and that she also paid taxes on the plaint schedule properties and that he purchased the plaint schedule properties for valuable consideration under original registered sale deed, dated 26.12.2013. The plaintiff further contends that after such purchase, the property is also mutated in his name and that he also paid tax in his name after such purchase. He filed exhibit P5 land tax receipt which stands in his name, besides exhibits P2, adangal, which stands in the name of his vendor; P3, pattadar pass book in the name of his vendor; and P4, title deed in the name of his vendor. Whereas the defendants while admitting the relationship between Chinnayya and Ramaswamy

and his brothers contend that Chinnayya during his life time with his own self acquisitions acquired several properties including the plaint schedule properties by virtue of two registered sale deeds, dated 14.07.1955 and 17.03.1960 and that after such purchase, the properties were mutated in his name and that he enjoyed the properties by cultivating the same along with his sons, that is, D2 to D5, and that on his death the properties devolved upon all the defendants with absolute rights and that the defendants are continuing in possession of the properties of late Chinnayya including the plaint schedule properties and that pattadar pass book and title deed book were also issued in the name of Chinnayya during his life time in respect of the properties acquired by him under the said two sale deeds. The original sale deeds of Chinnayya are exhibited as exhibits R1 & R2. R3 is the pattadar pass book in his name. R4 is the certificate issued by the Fire Officer evidencing the fact that the house of the defendants was gutted in fire. The further case of the defendants is that they came to know that Smhachalam, one of the vendors of the plaintiff illegally managed to obtain pattadar pass book and title deed books and got her name mutated in respect of the plaint schedule properties and other properties over which she and her husband and her legal heirs have no right and title and that over which Chinnayya and his legal heirs alone have absolute right, title and interest and that, therefore, the 1st defendant gave a grievance letter, dated 08.09.2014 to the District Collector. The copy of the said letter is exhibit R6. According to the defendants since the letter was not acted upon, the information was sought under RTI Act from the Tahasildar concerned. Exhibits R7 to R9 are the copies of applications filed by the 1st defendant under the provisions of RTI Act. The defendants also filed exhibit R5 adangal copy

for S.No.181/ 1 which shows that the said land is mutated in the name of Smhachalam, W/o.Pamaswamy. Since the said documents evidences the fact that the property is mutated in the name of one of the vendors of the plaintiff and the plaintiff produced Exhibits P3 and P4 pattadar pass book and title deed book, the trial Court held that the plaintiff has a *prima facie* case and the balance of convenience is also in favour of the plaintiff. However, the lower appellate court noted that the parties did not file the entire relevant evidence before the trial Court and further considered exhibits R11 to R13, which are permitted to be filed as additional evidence by the defendants. On consideration of the said documents along with the other documents filed and exhibited in 'P' & 'R' series before the trial Court the following aspects emerge: Exhibit R3 is the pattadar pass book in the name of Chinnayya and the same was admittedly issued on 05.09.1994. The said document which shows that Ac.0.04 cents in S.No.181/1 belongs to Chinnayya as his self acquired property supports the claim of the defendants. Item no.1 of the plaint schedule property is Ac.0.03 cents in S.No.181/ 1. Thus, though exhibit R5 is the copy of the adangal in respect of the same survey no.181/ 1 showing the name of Smhachalam, one of the vendors of the plaintiff, it is a document later in point of time. Exhibit R12 is the certified copy of 1(B) register, which also reveals that the said land in S.No.181/ 1 was registered in the revenue records as that of Korada Chinnayya. Further, exhibit R13, which is a certified copy of 1(B) register booklet issued by Tahasildar, also shows that the above said land in Sy.No.181/ 1 was registered in the name of Chinnayya. Thus, exhibits P3 & P4 pattadar pass book and title deed book, which are subsequent to the above stated documents, were not countenanced by the lower appellate Court. As rightly held by the lower appellate Court,

the documents which are prior in point of time shall be given due weight at this stage while considering a *prima facie* case subject to final decision after full fledged trial. Once pattadar pass book and title deed book were issued in favour of the party/land owner, the revenue authorities are not expected to mutate the land in the name of another or give similar documents to any other party without cancelling the earlier documents by following the procedure established by law. However, in the case on hand, according to the defendants, the revenue authorities ignoring the earlier documents and without cancelling the same issued exhibits P3 & P4 in favour of Smhachalam and, therefore, the said documents are not sufficient to establish a *prima facie* case in favour of the plaintiff, who purchased the plaint schedule properties from Smhachalam. Be it noted that the lower appellate Court also relied upon a decision in Kallem Penta Reddy v. Mandal Revenue Officer, Saroornagar Mandal, Saroornagar, [2014(1) ALT 123] wherein it was held as follows:

If any person is affected by an entry in the record of rights, he is required to apply for rectification to the prescribed officer and such application should be made within a period of one year from the date of notification. Further, Sections 4 and 5 of the Act deals with acquisition of new rights and the procedure for intimation and effecting necessary changes in the record of rights. The procedure for making application and the manner of the same are set out in Rules 15 to 17 of the A.P Rights in Land and Pattadar Pass Books Act and Rules, 1971 (for short, "the Rules".) which contemplate holding of an enquiry after giving notice to any person referred to in the application as having right or interest and also to any person whose name has been entered in the record as having interest in the land and such notice shall be in Form No.5 as prescribed under the Rules. After enquiry, final orders would be passed which orders would be subject to appeal and revision under the Act. Admittedly, in the present case, assuming for the sake of argument that there is a power to issue the memo like the one which has been issued the procedure contemplated under the Act and Rules have been violated more in the breach than in practice.

12. In the light of the above discussion and the legal position obtaining and considering the fact that insofar as item no.1 the document produced by the plaintiff contain entries of a later period than the entries in the documents produced by the defendants and that the documents with later entries were issued without cancellation of earlier documents with earlier entries by following the procedure established by law, this Court finds itself in agreement with the finding of the lower appellate Court that the temporary injunction granted by the trial Court in respect of item no.1 of the plaint schedule property is liable to be set aside as the plaintiff failed to establish a *prima facie* case which is a *sine qua non* for granting a temporary injunction.

13. I have also examined as to whether the lower appellate Court was correct in receiving on file the additional evidence while disposing of the CMA. The lower appellate Court recorded reasons for receiving additional evidence, *inter alia*, observing that despite best efforts made by the defendants they could not secure the documents, which are filed before the lower appellate Court, and that they were able to secure the said documents only after having resort to the provisions of the RTI Act and that, therefore, there are valid and sufficient grounds for receiving the documents filed by the defendants as additional evidence. In that view of the matter, the lower appellate Court need not be faulted for having received the said documents and considering the same while disposing of the CMA.

14. Viewed thus, this Court finds that there is no illegality, irregularity or impropriety in the order of the lower appellate Court and that, therefore, the said well considered order does not call for any interference.

15. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

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

18.09.2017
Vjl

M. SEETHARAMA MURTI, J

