

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION NO.4153 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order, dated 28.07.2017 in C.M.A.No.3 of 2017 on the file of the V Additional District Judge, Kothagudem, whereunder and whereby, the order, dated 13.06.2017 dismissing I.A.No.126 of 2017 in O.S.No.101 of 2017 on the file of the Principal Junior Civil Judge, Kothagudem, was confirmed.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed before the trial Court.

3. Petitioner/plaintiff filed the suit O.S.No.101 of 2017 seeking perpetual injunction against the respondent in respect of an extent of Ac.0.39 guntas in Sy.No.63/A situated at Old Paloncha, Paloncha Mandal, Bhadradi Kothagudem District, contending that he has been in possession and enjoyment of the same since long time. Along with the suit, the petitioner filed the above interlocutory application under Order XXXIX Rules 1 and 2 r/w Section 151 CPC seeking temporary injunction. The trial Court by order, dated 03.05.2017 granted ad-interim temporary injunction.

4. The respondent/defendant filed counter denying the averments made in the affidavit filed in support of the petition *inter alia* contending that she purchased the property under a registered sale deed. It is her further case that the petitioner was never in possession of the property at any time more particularly as on the date of filing of the suit.

5. During the course of enquiry, no oral evidence was adduced on behalf of either side but, Exs.P1 to P3 were marked on behalf of the petitioner and Exs.R1 to R21 were marked on behalf of the respondent.

6. The trial Court, after considering the documentary evidence available on record, arrived at a conclusion that the petitioner failed to prove *prima facie* case and also the balance of convenience in his favour and accordingly, dismissed the application by order, dated 13.06.2017, vacating the ad-interim injunction granted on 03.05.2017.

7. Aggrieved by the said order, dated 13.06.2017, the petitioner preferred C.M.A.No.3 of 2017 before the V Additional District Judge, Kothagudem. The learned V Addl. District Judge, after re-appraising the material available on record, dismissed the appeal confirming the order of the trial Court. Challenging the same, this revision is preferred by the petitioner.

8. The predominant contention the learned counsel for the petitioner is that after expiry of 30 days from the date of granting ex parte injunction, the Court has no power whatsoever to vacate the interim injunction, in view of Order XXXIX Rule 4 CPC. For better appreciation of contention of the learned counsel for the petitioner, it is not out of place to extract hereunder Order XXXIX Rule 4 CPC, which reads as follows:

“4.Order for injunction may be discharged, varied or set aside:- Any order for an injunction may be discharged, or varied, or set aside by the Court on application made thereto by any party dissatisfied with such order.”

A perusal of the above provision at a glance makes it clear that the Court can vary or set aside the interim injunction; therefore, there is no force in the submission made by the learned counsel for the petitioner. Establishment of *prima facie* case, balance of convenience in favour of the petitioner and the irreparable loss likely to be caused to the petitioner is a *sine qua non* for grant of temporary injunction. It is needless to say that a person, who seeks discretionary relief, has to come to the Court with clean hands.

9. The suit is of the year (2017). The pahanis filed by the petitioner pertain to the years prior to 2014-15. The petitioner did not choose to file the pahanis for the years 2014-15, 2015-16 and 2016-17. The pahanis filed by the petitioner do not disclose that the petitioner was in possession of the property as on the date of filing of the suit. Ex.P2-statement of E.C., dated 06-03-2017 and Ex.P3-market valuation certificate, dated 06-03-2017 are no way helpful to substantiate his stand. On the other hand, the respondent filed Exs.R1 to R3-registered sale deeds, Ex.R5-R.O.R. pass book, Ex.R6-pahani for the year 2016-17, Exs.R7 to R18- revenue receipts and Ex.R19- copy of representation submitted to R.D.O.

10. While deciding the applications of this nature, the Court shall not express any opinion touching the merits of the main case. The Court has to *prima facie* consider the documents and other material placed before it. As observed earlier, the documents filed by the petitioner falls short to establish *prima facie* that he has been in possession and enjoyment of the suit schedule property, much less, as on the date of filing of the suit. On the other hand, various documents filed by the respondent *prima facie* negative the

contention of the petitioner. The trial Court, after considering the material available on record, arrived at a conclusion that the petitioner failed to establish *prima facie* case, balance of convenience in his favour and irreparable loss likely to be caused to him if injunction is not granted. The 1st appellate Court, after re-appraising the material available on record, *prima facie* arrived at a conclusion that the petitioner failed to prove the ingredients of Order XXXIX Rule 1 CPC.

11. It is a settled principle of law that this Court shall not interfere with the concurrent finding of fact recorded by the Courts below. However, the Court can interfere with the impugned order, while exercising the jurisdiction under Article 227 of the Constitution of India, if there is a manifest error. In the instant case, the trial Court as well as the 1st appellate Court assigned reasons much less cogent and convincing reasons, while recording the findings. I am fully endorsing with the findings recorded by the both Courts below.

12. Having regard to the facts and circumstances of the case and in view of the foregoing discussion, I am of the considered view that it is not a fit case to interfere with the orders of the Courts below while exercising the jurisdiction under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No order as to costs. Miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 24-08-2017.

Hsd

