

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Miscellaneous Appeal No.704 of 2016

JUDGMENT:

This civil miscellaneous appeal, under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, ('the Code', for short), is filed by the unsuccessful respondents in IA.No.375 of 2016 in AS.No.120 of 2016 on the file of the Court of the learned VIII Additional District Judge, Ranga Reddy District at L.B. Nagar, assailing the orders, dated 02.06.2016, passed in the afore-said IA.

2. I have heard the submissions of Sri Resu Mahender Reddy, learned counsel for the appellants, and of Sri B. V. Subbaiah, learned senior counsel representing Sri Krupachand Gogineni, learned counsel for the respondents. I have perused the material record.

3. The appellants herein are the defendants. The respondents herein are the plaintiffs.

4. The introductory facts, in brief, are as follows:

The plaintiffs brought OS.No.1619 of 2009 against the defendants for perpetual injunction in respect of Ac.0.27 guntas of agricultural land in Survey No.204 of Shamshabad village and mandal more fully described in the schedule annexed to the plaint. The defendants resisted the suit. On merits and after full fledged trial, the suit was dismissed. Therefore, the unsuccessful plaintiffs preferred the afore-said first appeal suit, AS.No.120 of 2016. Along with the appeal, the unsuccessful plaintiffs filed I.A.No.375 of 16 under Order XXXIX Rules 1 & 2 read with Section 151 of the Code requesting to restrain the defendants/ respondents in the appeal suit from interfering with the plaintiffs' peaceful possession and enjoyment over the afore-stated suit property. The defendants filed a counter resisting the said application. By the order impugned in this appeal, the lower appellate Court allowed the petition of the

plaintiffs and directed both the parties to maintain *status quo* in respect of the suit schedule property till the disposal of the first appeal suit. Aggrieved thereof, the defendants preferred this appeal.

5. Learned counsel for the defendants would submit as follows:

The trial Court on merits and after full fledged trial dismissed the suit of the plaintiffs filed for perpetual injunction. The defendants in fact filed OS.No.1512 of 2009 against Zareena Begum and Surayya Begum for perpetual injunction in respect of three items of property that is 1066 Sq.yards or Ac.0-8.8 guntas; Ac.3-17.05 or 16584 Sq.yards and 500 Sq.yards in Survey no.204 of Shamshabad village and Mandal more fully described in the schedule annexed to the said plaint of the defendants. Both the suits were disposed of on the same day by the trial Court and the afore-stated suit of these defendants was decreed and the present suit of the plaintiffs herein was dismissed. Aggrieved of the decree and judgment in the other suit, O.No.1512 of 2009, the defendants therein preferred another appeal AS.No.119 of 2016. In that appeal also an interlocutory application was filed by the appellants therein. That IA in AS.No.119 of 2016 and the present IA in the present appeal suit were disposed of by separate orders on the same day and *status quo* orders are granted in both the applications in both the appeal suits without stating what is the *status quo* as on the date of granting *status quo* orders. In the impugned order, the Court below having observed that during the pendency of the present suit and connected suit, the trial court granted status quo orders simply granted status quo orders by the order impugned by directing the parties to maintain status quo over the disputed property till the disposal of the appeal without deciding a prima facie case with regard to possession over the subject property. The lower appellate court simply noted that the plaintiffs herein are claiming Ac.0.27 guntas by virtue of succession proceedings granted by the Tahasildar, Shamshabad, and that the same were subsequently set aside by the Joint Collector and that the said orders are

stayed by the appellate authority and as the succession proceedings against the vendors of the plaintiffs namely Zareena Begum and Surayya Begum are not finally adjudicated and as during the pendency of the suit, status quo has continued it is appropriate to direct parties to maintain status quo. Neither the pleadings of the parties nor the were the contentions raised referred to in the impugned orders and a cryptic order was passed without discharging the duty enjoined upon the learned Judge though the learned Judge of the lower appellate court is obligated under facts and in law to decide one way or the other as to which party is *prima facie* in possession of the property. Had the lower appellate court discussed the facts, contentions and examined the merits of the matter, it would have come to a conclusion that the plaintiffs are not in possession as rightly held by the trial Court. Therefore, the order is unsustainable and is liable to be set aside and the matter requires to be remitted to the trial Court for disposal afresh on merits and in accordance with the procedure established by law.

6. Per contra, learned senior counsel for the plaintiffs would submit as follows:

“The plaintiffs’ suit for perpetual injunction was dismissed by the trial Court. Challenging the decree and judgment of the trial Court the plaintiffs preferred the appeal. The appeal is pending before the lower appellate court. During the pendency of the appeal by filing an IA, the plaintiffs sought a temporary injunction pending disposal of the appeal suit. Plaintiffs are lawful owners and possessors of the plaint schedule property by virtue of registered agreement of sale cum irrevocable power of attorney with possession *vide* registered document bearing no.2531/09 dated 29.7.2009 registered on 6.8.2009. One late S. Tayyabji was the owner and pattadar of agricultural land bearing survey no.204 of an extent Ac.4.30 guntas of Shamshabad village. After his death his two sons and his second wife alienated Ac.4.03 guntas under three different sale deeds in favour of the defendants. The remaining area of

Ac0.27 guntas is the present suit schedule property, which remained in the name of Tayyabji. The Government also acquired Ac.0.13 guntas for road widening. The defendants filed claim petition for the acquired extent and claimed a compensation of Rs.33,50,000/- . After deducting the acquired land from their extent, the defendants are in possession of Ac.3.30 guntas in S.No.204. In the remaining extent, which is the plaint schedule property of Tayyabji, the defendants have no manner of right or possession. The vendors of plaintiffs applied before the revenue authorities for grant of succession rights. The Tahasildar granted succession rights vide proceedings, dated 04.05.2009, and issued pattedar pass books and title deeds by implementing the names of the plaintiffs' vendors in revenue records. The vendors of plaintiffs applied for survey and demarcation of boundaries. When mandal surveyor issued notices to the defendants and vendors of the plaintiffs, the defendants filed a writ petition to declare the action of the Collector & MRO, Shamshabad, in issuing the said notice as illegal and arbitrary. The writ petition was withdrawn. The Mandal Surveyor conducted survey and fixed boundaries. The vendors of the plaintiffs already executed agreement of sale in favour of the plaintiffs. When the defendants tried to interfere with the possession of the plaintiffs the suit was brought. Thus, the plaintiffs are not claiming any property of the defendants but they are only claiming the remaining extent of Ac.0.27 guntas of Tayyabji, which remained with him after the remaining extent was sold away apart from the acquired extent. However, the trial court erroneously dismissed the suit by not properly appreciating surveyor's evidence, who is examined as PW2, on the ground that the plaintiffs failed to locate their land in Sy.no.204 when he asked them to locate their land and that the plaintiffs' vendors failed to obtain succession certificate." So stating the case of the plaintiffs, learned senior counsel supported the orders impugned.

7. I have given earnest consideration to the facts and submissions. In the well considered view of this court, this matter need not detain this court for

long as the order impugned granting status quo without going into the merits of the matter and without stating what is the status quo is an unsustainable order under facts and in law. It is apt to refer to the operative portion of the order impugned which reads as under:

6. As seen from the records it is clear that during the pendency of the suit ie., OS.No.1619 of 2009 filed by the petitioner the trial court granted status quo through common orders dt.26.11.2009 in IA.No.1765 of 2009 in OS.No.1512 of 2009 and IA.No.1512 of 2009 in OS.No.1619 of 2009. Petitioners are claiming an extent of Ac.0.27 guntas by virtue of succession proceedings issued by Tahsildar Shamshabad which was set aside subsequently by the Joint Collector (II), Ranga Reddy District vide orders in Revision Case No.D1/3761/2012, dt.01.07.2014. But the said orders passed by the Joint Collector stayed and pending before the appellate authority. There is no dispute about the existence of the land purchased by the respondents under three sale deeds and also acquisition of Ac.0.13 guntas from the extent of the respondents property. Since the succession proceedings against the vendors of the petitioner namely Zarina Begum, Surayya Begum against an extent of Ac.0.27 guntas is not yet finally adjudicated and during the pendency of suit the status quo orders continued, I feel that it is appropriate to direct both parties to maintain status quo on the disputed property over the petition schedule property till the disposal of the appeal.
7. In the result, the petition is allowed, accordingly by directing both parties to maintain status quo on the suit schedule property till the disposal of the appeal.
8. A plain reading of the order itself shows that on the face of it the order is unsustainable. The term status quo is undoubtedly a term of ambiguity and gives rise to doubt. It implies the existing state of things at any given point of time. Unless what is the status quo is specified by the court before ordering the same, the order would be ambiguous and would lead to further complications. Therefore, it is expedient not to pass such ambiguous order. In the decision in Chirapareddi Veeramma and others v. Sk.Mahaboob Subhani and others [1991 (1) ALT 366] the facts disclose that in an IA for grant of temporary injunction pending suit, after mentioning the facts of the case and the previous litigation between the parties, a learned District Munsif stated that it may not be good for the Court to give a finding as to whether the

plaintiffs or the defendants are in possession and that, therefore, it would be better to direct maintenance of status quo and accordingly granted status quo orders. Thereafter the police aid was sought for implementation of the status quo orders but the same was not granted. In that factual backdrop, this Court held as follows:

‘In matters relating to disputes regarding possession it is the duty of the court to decide one way or the other as to which party is prima facie in possession of the property. Unfortunately, in several cases coming up before the lower courts instead of giving a categorical finding as to which party is in possession, the courts frequently resort to granting orders for maintenance of ‘status quo’. Before the court passes such an order, it is incumbent on the court to give a finding as to the particular status quo that it wants to be maintained viz., whether the plaintiff or the defendant is in possession and whose possession is to be maintained. The court cannot escape its duty by merely saying that status quo is to be maintained.’

The present case before this Court is also a glaring instance of the lower appellate Court not giving a categorical finding in an application seeking injunction filed in an appeal suit against the decree dismissing the suit for perpetual injunction. Whenever, under exceptional circumstances, a status quo order is granted instead of temporary injunction, it is incumbent upon the Court to give a finding as to the particulars of the status quo that it wants to be maintained. Even that was not done in this instant case. The lower appellate court merely directed the parties to maintain *status quo* and thus failed to discharge its duty. Such an order is capable of causing greater harm than even a wrong order granting or refusing temporary injunction as per settled legal position. In view of the facts and precedential guidance, this court finds that the status quo order, which is ambiguous and which is granted without discharging the duty which is incumbent upon the Court and without giving a finding as to the status quo that the court wants to be maintained viz., whether the appellants or the respondents are in possession and whose possession is to be maintained, is unsustainable under facts and in law. Therefore, this Court holds that the order impugned deserves to be set aside

and the matter requires to be remitted to the Court below for disposal afresh, on merits and in accordance with the procedure established by law.

9. In the result, the Civil Miscellaneous Appeal is allowed and the order impugned is set aside and the IA.No.375 of 2016 in AS.No.120 of 2016 is remitted to the Court below for disposal afresh on merits and in accordance with the procedure established by law. It is also made clear that since the appeal and connected appeal are of the year 2016, the lower appellate court is at liberty to dispose of either the IA, which is remitted, or the appeal suit itself having regard to the pendency of the old and identified matters on its file.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

19.09.2017

Note: Issue CC by 05.10.2017

[B/o]
VjI

M. SEETHARAMA MURTI, J



