

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2818 of 2011

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the orders dated 30.05.2011 in C.M.A.No.8 of 2007 on the file of the Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District Judge, at Srikakulam, reversing the order dated 08.02.2007 in I.A.No.261 of 2006 in O.S.No.158 of 2006 on the file of the Junior Civil Judge, Amadalavalasa.

2. During the pendency of the C.M.A., the sole petitioner died and second petitioner came on record as his legal representative. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in I.A. No.261 of 2006.

3. The learned counsel for the petitioner submitted that the finding of the appellate Court that Exs.P1 and P2 are not genuine documents is not sustainable either on facts or in law. He further submitted that the finding of the appellate Court that Ex.P5 is subsequent to the date of filing of the suit is not sustainable. He also submitted that the findings recorded by the appellate Court are not sustainable either on facts or in law. **Per contra**, learned counsel for the respondents submitted that the respondents have been in

possession and enjoyment of Ac.0.11 cents of land even as on today. He further submitted that there is no illegality or irregularity in the orders of the appellate court, which warrants interference of this Court.

4. The facts leading to filing of the present revision are briefly as follows: The petitioner filed O.S.No.158 of 2006 on the file of the Junior Civil Judge, Amadalavalasa against the respondents seeking perpetual injunction in respect of an extent of Ac.0.42 cents in Survey No.56/2 of Embaram village, Laxminarsupeta Mandal. Along with the suit, the petitioner filed I.A.No.261 of 2006 under Order XXXIX Rules 1 and 2 of CPC seeking interim injunction and the same was allowed on 08.02.2007. Feeling aggrieved by the order of the trial Court, the respondents filed C.M.A.No.8 of 2007 on the file of the Special Judge for Trial of Cases under SCs & STs (PoA) Act-cum-Additional District Judge at Srikakulam and the same was allowed on 30.05.2011. Hence, the present revision petition.

5. It is the case of the petitioner that the petitioner, respondent No.1 and one Jaggaiah are the sons of Suranna. In the family partition, the petitioner got an extent of Ac.0.42 cents in Survey No.56/2 of Embaram Village, which is the suit schedule property. It is the case of the respondents that petitioner, respondent No.1 and Jaggaiah got an extent of Ac.0.14 cents each in survey No.56/2 in the oral partition. It

is the further case of the respondent Nos.1 and 2 that they mortgaged an extent of Ac.0.11 cents in Survey No.56/2 in favour of the petitioner and sold an extent of Ac.0.03 cents in favour of the third respondent under a registered sale deed dated 14.12.2006.

6. Before the trial Court, on behalf of the petitioner, Exs.P1 to P6 were marked. On behalf of the respondents, Ex.R1 was marked. As per the recitals of Exs.P1 and P2 pattadar pass book and title deed, the petitioner is the owner of an extent of Ac.0.42 cents in Survey No.56/2. As per the recitals of Ex.P5 adangal, the petitioner has been in possession and enjoyment of an extent of Ac.0.42 cents in Sy.No.56/2. The pattadar pass book and title deed were issued in favour of petitioner in the years 1995 and 96 respectively. Ex.P5 was issued in the year 2005. The appellate Court made an observation that Ex.P5 adangal was issued on 02.02.2007, which is factually incorrect. Therefore, the finding of the appellate Court that Ex.P5 was issued in favour of the petitioner after filing of the suit is also factually not sustainable, as the suit was filed in the year 2006. After having a thoughtful consideration to the material available on record, the trial Court granted ad-interim injunction in favour of the petitioner. The appellate Court *prima facie* disbelieved Exs.P1, P2 and P5 on erroneous grounds.

7. It is needless to say that the Court can place *prima facie* reliance on pattadar pass book and title deed issued by revenue authorities in favour of a person unless and until the contrary is proved. At the time of arguments, learned counsel for the respondents submitted that the respondents have not filed any appeal challenging the validity of Ex.P1 pattadar pass book, Ex.P2 title deed and Ex.P5 adangal. In such circumstances, the Court can place *prima facie* reliance on Exs.P1, P2 and P5. As per the version of respondents, they executed the mortgaged deed in favour of the petitioner in respect of an extent of Ac.0.11 cents of land. This itself *prima facie* indicates that the respondents 1 and 2 are not in possession and enjoyment of Ac.0.11 cents of land. The fact remains that respondent Nos.1 and 2 executed a sale deed in favour of respondent No.3 on 14.12.2002 for an extent of Ac.0.03 cents. Unless and until the contrary is proved, the Court can place *prima facie* reliance on a registered sale deed. It is the case of the respondents that the respondents and petitioner have partitioned the joint family property orally. In such circumstances, the finding of the appellate Court that co-owner is not entitled for injunction is not sustainable on facts. The findings recorded by the first appellate Court are not sustainable either on facts or in law. If the order of the appellate Court is allowed to stand, certainly it amounts to miscarriage of justice.

8. When there is any illegality or irregularity or impropriety in the order under challenge, this Court can interfere with the same while exercising the jurisdiction under Article 227 of the Constitution of India.

9. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the orders of the first appellate Court. This Court while suspending the order in C.M.A., on 29.07.2011, granted injunction in favour of the petitioner in respect of an extent of Ac.0.39 cents only.

10. In the result, the Civil Revision Petition is allowed setting aside the orders dated 30.05.2011 in C.M.A.No.8 of 2007 on the file of the Special Judge for trial of Cases under SCs & STs (POA) Act-cum-Additional District Judge at Srikakulam. Consequently, I.A.No.261 of 2006 in O.S.No.158 of 2006 on the file of the Court of Junior Civil Judge, Amadalavalasa is allowed granting temporary injunction in favour of the petitioner to an extent of Ac.0.39 cents in Survey No.56/2 of Embaram Village, Laxminarasupeta Mandal. As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

T.SUNIL CHOWDARY, J

March 10, 2017.
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