

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.254 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioners/ plaintiffs is directed against the decree and decretal order, dated 17.10.2016, of the learned Judge, Family Court, Mahabubnagar, passed in C.M.A.No.7 of 2016, whereby, the said learned Additional District Judge, while dismissing the said appeal confirmed the order and decretal order, dated 03.06.2016, of the learned Junior Civil Judge, Jadcherla, passed in I.A.No.281 of 2015 in O.S.No.96 of 2015 filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, ('the Code') requesting to grant a temporary injunction restraining the respondents/ defendants from interfering with the peaceful possession of the 1st plaintiff over the plaint 'A' schedule lands and that of the 2nd plaintiff over the plaint 'B' schedule lands, situated at Balanagar Village and Mandal, more fully described in the said schedules annexed to the plaint.

2. I have heard the submissions of *Sri M.Damodar Reddy*, learned counsel appearing for the petitioners/ plaintiffs, and of *Sri Pasham Srinivasulu*, learned counsel appearing for the respondents/ defendants. I have perused the material record. The parties shall hereinafter be referred to as the plaintiffs and the defendants for convenience and clarity.

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

3.1 The case of the plaintiffs, in brief, is this:

The 1st plaintiff purchased the plaint 'A' schedule land under a registered sale deed, dated 23.11.2014. His name is entered in the revenue records. Pattadar pass book and title deed book were also issued to him. The 2nd plaintiff purchased plaint 'B' schedule land under a registered sale deed

bearing Document No.8736 of 2013 and his name is also entered in the revenue records; and, he was also given separate pattadar passbook and title deed book in respect of the said land. The plaintiffs are in actual possession of their respective suit lands, i.e., plaint 'A' and 'B' schedule lands and are cultivating the same personally. In the rainy season prior to the suit, they raised paddy crop in the suit lands. The defendants have no concern with the suit schedule lands. From the respective dates of purchases of the suit lands by the plaintiffs, the defendants are having grudge against them; and, on several occasions they had tried to occupy the plaint schedule lands forcibly. The plaintiffs approached the Superintendent of Police and their representation was forwarded by the said Officer to the police concerned of Balanagar. However, they did not take any action, and the defendants continued their illegal acts. On 10.10.2015, all the defendants came to the schedule lands and tried to damage the crop, and occupy the suit schedule lands forcibly without any manner of right, title and interest in the suit lands. Hence, the suit is filed against the defendants. The present application is filed for grant of temporary injunction pending final disposal of the suit.

3.2 The case of the defendants, in brief, is this:

The suit lands are protected tenancy lands. The defendants are protected tenants of the suit schedule lands. The protected tenancy lands are inalienable and they are prohibited from alienation under Section 37 of the Tenancy Act. The alleged alienation by the landlord is illegal and void and not binding on these defendants. The landlord has to alienate the tenancy lands only to the protected tenants and not to any other person. Under the alleged registered sale deeds of the plaintiffs, the possession of the properties was not delivered and the possession of the suit lands is still with the defendants. The alleged sale deeds being relied upon by the plaintiffs are sham documents. The plaintiffs tried to occupy the suit schedule lands forcibly; but, they could not succeed. Hence, they filed the present suit by suppressing the real facts.

Under Section 99 of the Tenancy Act, a civil suit is not maintainable. The plaintiffs managed the Tahasildar by giving bribe and got their names recorded in the revenue records on the basis of registered sale deeds. The Tahasildar was required to verify whether or not the suit lands are free from encumbrances or charges and whether they are covered by prohibition from being alienated under law. He is also required to conduct a local enquiry. The revenue records filed by the plaintiffs are manipulated documents and they do not bind the defendants. When the Tahasildar mutated the names of the plaintiffs in the revenue records without any notice to the defendants, who are in possession of the suit lands, the defendants filed a revision under Section 9 of the Record of Rights Act against the plaintiffs and the Tahasildar. The Collector, Mahabubnagar, has taken up the case vide File No.D1/ 77/ 2015, dated 19.10.2015, and directed the Tahasildar to take up the case and to pass appropriate orders. Then, these defendants filed a petition before the Tahasildar, Balanagar, to delete the names of the plaintiffs from the revenue records as the landlords have no right to sell and the plaintiffs have no right to purchase the suit lands and as the plaintiffs are not in possession of the suit lands. The deceased grandfather of the defendants, by name, Mangali Narayana and one Mangali Sathaiah are sons of Laxmaiah. They were protected tenants of various lands, viz., Ac.15.07 guntas in Survey No.8, Ac.1.13 guntas in Survey No.101 and Ac.0.22 guntas in Survey No.102, situated within the limits of Balanagar village & Mandal. The pattadar of land in Sy.No.8 was one Shankar Reddy. The pattadar of land in Sy.No.102 was Kammari Buchaiah. The legal heirs of Narayana, i.e., Mangali Yadaiah, Mangali Laxmaiah and Mangali Shankaraiah filed petition before the Tahasildar, Balanagar, for restoration of possession in respect of lands bearing Sy.Nos.8, 101, 102 situated within the limits of Balanagar limits. The said petition was filed against one Pam Reddy, Buchaiah and Anthaiah. On contest, the Tahasildar, Balanagar, ordered for handing over possession of the lands, on 27.02.1990, insofar as the lands

bearing Sy.Nos.101 and 102. The said order was passed in File No.A/ 3163/ 87. The respondents therein preferred an appeal on the file of the Joint Collector, Mahabubnagar, vide File No.B7/ IA-99/ 90, dated 19.07.1997. The matter was remanded by the Joint Collector to the Tahasildar, Balanagar. The Tahasildar, Balanagar, vide File No.A1/ 4391/ 97, dated 20.06.2001, delivered possession of the lands bearing Sy.Nos.101 and 102 in extents of Ac.1.11 guntas and Ac.0.13 guntas respectively to the protected tenants. By virtue of the orders of the Revenue Courts, the defendants, who are the legal heirs of the original protected tenants, are in possession and enjoyment of the lands continuously and openly to the knowledge of the pattadars. The plaintiffs never cultivated the said lands. The defendants raised 'Uluvalu' crop in the suit lands as on the date of the filing of the counter. The cause of action is imaginary. The police of Balanagar never interfered in the matter. The complaint given to the Superintendent of Police is a false complaint. The petition may be dismissed.

4. At the hearing before the trial Court, the following documents were marked. Exhibit P1, original registered sale deed; exhibit P2, original mutation proceedings; exhibits P3 and P4, original pattedar passbook and title deed book of the 1st plaintiff; exhibit P5, CC of ROR, exhibit P6, CC of pahani consisting of 12 pages; exhibit P7, original sale deed of 2nd plaintiff, exhibit P8, original mutation proceedings, exhibits P9 and P10, original pattedar pass book and title deed book of the 2nd plaintiff; exhibit P11, CC of ROR, exhibit P12, CC of pahani consisting of five pages; and exhibit P13, CC of panchanama. Exhibit R1, CC of kasra pahani for the year 1954-55; exhibit R2, proceedings, dated 20.06.2001, of the MRO; exhibit R3, revision petition; exhibit R4, direction of the District Collector, dated 19.10.2015, to the Tahasildar, Balanagar; and exhibit R5, application, dated 05.11.2015, made to the Tahasildar. On merits, the trial Court dismissed the application of the plaintiffs without costs. As already noted, the Court below dismissed the appeal of the plaintiffs and

confirmed the orders of the trial Court. Therefore, the plaintiffs are before this Court.

5. Learned counsel for both the parties advanced arguments in line with the respective pleadings of the parties.

6. Learned counsel for the plaintiffs would further submit as follows:

The Courts below ought to have considered not only the registered sale deeds (exhibits P1 and P7) but also the copies of revenue records, which are exhibited in 'P' series. The said documents *prima facie* show that the plaintiffs are in possession of the plaint 'A' and 'B' schedule lands and that after the respective purchases made by the plaintiffs under regular registered sale deeds, the properties are mutated in their names and their names are entered in the revenue records in respect of the plaint 'A' and 'B' schedule properties. The Courts below ought to have seen that at the time of considering the request in the application for temporary injunction, the vital aspect that falls for examination is actual possession of the plaintiffs over the suit lands. The Courts below ought to have seen that the documents filed by the plaintiffs establish a *prima facie* case and that on the other hand, the documents filed by the defendants, viz., copies of the khasra pahanie, proceedings of the MRO and the revision petition are of no avail to them in the face of overwhelming documentary evidence filed by the plaintiffs. If the defendants are protected tenants, it is for them to obtain physical possession of the suit schedule lands by having recourse to Section 32 of the Tenancy Act. Unless the defendants initiate proceedings for duly evicting the persons in possession and duly obtain possession by establishing their alleged tenancy rights, they cannot raise any contest in the suit or claim possession over the suit lands. The Tahasildar, Balanagar, conducted a regular enquiry in the matter and rejected the case of the defendants and upheld the entries in the revenue records. The Courts below failed to consider the facts correctly and the legal position in proper

perspective. The Courts below ought to have seen that the plaintiffs are having a *prima facie* case and that balance of convenience is in their favour and that if no injunction is granted, they would suffer serious and irreparable loss.

6.1 The learned counsel for the plaintiffs relied upon a decision in *Gone Rajamma v. Chennamaneni Mohan Rao*¹ in support of the proposition that simply because a person claims to be a protected tenant or a legal heir of the protected tenant, there cannot be a presumption that the said claimant is in possession of the property and that it is for the person claiming to be a protected tenant to establish that he is not only a protected tenant but also is in possession of the property and that in an application for temporary injunction, merely on the deemed possession of the protected tenant, the plaintiffs cannot be denied a temporary injunction when they are in actual possession of the property and that the remedy of the protected tenants is to file an application for recovery of possession before the competent Forum and hence, the orders of the Courts below call for interference. This decision was also relied upon in support of the further proposition that even if it is to be assumed that the plaintiffs who are in possession have no right to remain in possession; yet, injunction has to be granted in their favour as they have to be evicted by following the due process of law.

7. Per contra, the learned counsel for the defendants while supporting the orders of the Courts below would further contend as follows:

Plaint 'A' schedule property is in Sy.No.101/ E, 102/ E, 101/ EE, 102/ EE according to the plaint schedule. Similarly, plaint 'B' schedule is in Sy.No.101/ AA, 102/ A according to plaint 'B' schedule. The defendants are the legal heirs of the protected tenants. The protected tenancy lands are prohibited from alienation. The landlord is not supposed to sell the properties

¹ 2010 (3) ALD 175

to any third parties. If he intends to sell the property, he must offer the lands for sale to the protected tenants. The sale deeds of the plaintiffs are sham and nominal. The defendants categorically pleaded that by bribing the Tahasildar, the plaintiffs got mutated the properties in their names without being in possession. The matters are sub-judice before the Revenue Courts. The Revenue Courts are only competent to decide the issue. The Civil Court is not having jurisdiction. The Courts below recorded concurrent findings that the plaintiffs are not in possession and that they could not establish a *prima facie* case; which is a *sine qua non*, and dismissed the application seeking temporary injunction filed by the plaintiffs. Except reiterating the self same contentions, no new points are urged in the revision. Considering the narrow scope of revision under Article 227 of the Constitution of India, this Court will not generally interfere with such concurrent findings. The revision may be dismissed.

7.1 Learned counsel for the defendants relied upon the decision of the Supreme Court in *Kotaian v. Property Association of Baptist Churches (Pvt.) Ltd.*², in support of the proposition that the land holders are prohibited from alienating the land, which is the subject matter of protected tenancy, and that the land holder or the purchaser from the land holder cannot dispossess the protected tenant or the legal heirs of the protected tenant and that even in a case where the tenancy is terminated, the land holder will have to take recourse to Section 32 of A.P (T.A) Tenancy & Agricultural Lands Act, 1950 and that the landholder has to approach the Tahasildar to hold an enquiry and pass an order in his favour and that whenever the land holder or anybody else dispossess the protected tenant, the Tahasildar is enjoined with a duty to either *suo motu* or on an application of the parties to hold summary enquiry and direct restoration of possession to the protected tenant and that it is the mandate of Section 38 of the Act and that when the matter is *sub judice* before

² 1989 AIR 1753

the revenue Court, any order by the Civil Court is unwarranted in the facts and circumstances of the case.

8. I have bestowed my attention to the facts and submissions.

9. It is to be first noted that the plaintiffs are claiming possession over the suit schedule lands by virtue of the registered sale deeds respectively obtained by the 1st plaintiff and 2nd plaintiff from the landholders in respect of the plaint 'A' and 'B' schedule properties. According to the plaintiffs, after such purchases made respectively by them, the respective plaint 'A' and 'B' schedule properties are mutated in their names and that pattadar pass books and title deed books were also separately given to the plaintiffs in respect of the subject lands and that they are in possession of the suit schedule lands and that they raised paddy crop and that there was standing paddy crop in the suit lands as on the date of filing of the suit. Per contra, the case of the defendants is that the lands are tenancy lands and that their predecessors are protected tenants and that the tenancy rights devolved upon them they being the legal heirs of the protected tenants and that in view of the protected tenancy rights of the defendants, the lands are not alienable and that there is a prohibition under law from alienating the lands and that the landholder cannot alienate the lands to any third party except the protected tenants and that the documents of the plaintiffs are sham and nominal and that the same do not bind the defendants and that by pressing into service the alleged invalid documents, mutations in the revenue records were obtained by giving bribe to the Tahasildar concerned and that the revenue records are manipulated and that the defendants are in khas/ actual possession of the plaint schedule lands and that they raised 'Uluvalu' crop in the suit lands and that the said crop was standing in the schedule land as on the date of filing of their counter and that the plaintiffs are not at all in possession of the suit schedule lands.

9.1 The defendants also relied upon the orders of the revenue authorities and the revenue proceedings in support of their contention that the matter is *sub judice* before the revenue authorities; and that therefore, the civil Court is not having jurisdiction and that the plaintiffs have no semblance of case and they are not entitled to any injunction as was concurrently held by the Courts below. Apart from other documents, exhibit R2, Order of the Mandal Revenue Officer, Balanagar, dated 20.06.2001, in File No.A1/ 4391/ 97, on a careful perusal, would make it manifest that on account of non-submission of any proof of surrender of protected tenancy rights, the Mandal Revenue Officer ordered restoration of possession of the above said lands to the protected tenants. Further, amongst the defendants, the defendants 1 and 2 and others filed a revision petition in D1/77/2015 before the Joint Collector, Mahabubnagar, questioning the revenue entries and issuance of pattedar passbooks and title deed books in respect of the said lands and in the said revision, the Joint Collector passed orders, dated 19.10.2015, directing the Tahasildar, Balanagar, to take up the case under the tenancy law. Copy of the revision petition filed by some of the defendants and the copy of the order of the Collector, dated 19.10.2015, are exhibited as exhibits R3 and R4. In the light of these proceedings before the revenue Courts and the findings of the Mandal Revenue Officer about the non-surrender of the rights of the protected tenants and his order directing restoration of possession to the protected tenants and as the documents in exhibit 'R' series *prima facie* establish that appropriate proceedings are pending before the revenue Courts, the Courts below came to a concurrent conclusion that the plaintiffs have no *prima facie* case and accordingly, refused to grant temporary injunction, as prayed for by the plaintiffs. Having regard to the said facts and in the light of the further fact that the matter is *sub judice* before the competent revenue Court, this Court is of the considered view that there is no merit in the revision and that the orders impugned do not brook interference.

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

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
RAR

