

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5105 of 2016

ORDER:

1) The present Civil Revision Petition is filed questioning the order, dated 12.09.2016, passed in I.A.No.317 of 2016 in I.A.No.597 of 2013 in O.S.No.413 of 2013 on the file of the Principal Junior Civil Judge, Chittoor, wherein the request of the plaintiff for grant of police aid so as to implement the temporary injunction granted by the Court in I.A.No.597 of 2013 was allowed.

2) The petitioner herein is the defendant and respondent herein is the plaintiff in O.S.No.413 of 2013. For the sake of convenience, the parties hereinafter referred to as arrayed in O.S.

3) The facts in issue are as under:

The respondent/plaintiff filed O.S.No.413 of 2013 seeking permanent injunction against the petitioner/defendant from interfering with her possession and enjoyment over the schedule property. Along with the suit, the plaintiff also filed I.A. for grant of ad-interim temporary injunction. By an order, dated 25.11.2013, the trial Court granted ad-interim temporary injunction which was subsequently made absolute on 02.07.2015. Aggrieved by the said order, the defendant filed C.M.A.No.33 of

2015 before the VIII Additional District Judge, Chittoor. Along with the C.M.A. the defendant also filed I.A.No.20 of 2015 seeking suspension of the injunction order. The said I.A. and C.M.A. are still pending consideration before the said Court. After granting of interim injunction, the respondent herein filed I.A.No.211 of 2014 seeking police protection, which was dismissed on 07.04.2016 giving liberty to her to file an application as and when the situation warrants. Though there was an order of injunction in favour of the plaintiff, the averments in the affidavit filed in support of the petition would show that the defendant was disturbing the plaintiff in enjoying the property. It is further alleged that the defendant is trying to prevent the plaintiff from running borewell with a view to see that sugarcane crop gets dried. It is also stated that unless police protection is granted, the plaintiff will not be in a position to cultivate the land, in spite of the injunction order.

4) A counter came to be filed by the defendant denying the averments made in the affidavit filed in support of the I.A. It is alleged that while reporting before the District Court that the plaintiff is not ready with the proceedings in C.M.A., and coercive steps are being taken under the guise of injunction order by insisting on police aid.

5) After considering the rival submissions made, the trial Court allowed the petition granting police aid for implementation

of the order of the temporary injunction. Challenging the same the present revision is filed.

6) Learned counsel for the petitioner mainly submits that since the order of temporary injunction is subject matter of challenge in C.M.A. the question of granting police aid for the purpose of implementing the injunction order would not arise. It is further urged that the Tahsildar, G.D.Nellore, dated 06.04.2015 cancelled the D-Form patta, pattadar pass book and title deed issued in favour of the plaintiff, which are subject matter of challenge in W.P.No.12845 of 2015, wherein this Court granted only *status-quo*. Having regard to the above, he submits that granting police aid is contrary to law.

7) Disputing the averments made in the grounds of revision, learned counsel for the plaintiff would submit that since no interim orders are passed in C.M.A. though an application is filed seeking suspension of the injunction order, there is nothing wrong in lower court granting police protection for implementation of the injunction order. It is further urged that earlier application for police aid was closed giving liberty to make an application as and when situation arises and as such filing of present application would not be a bar or operate as a *res judicata*. Insofar as W.P.No.12845 of 2015 is concerned it is urged that the said writ petition was filed declaring the action of the respondents therein in issuing proceedings No.D.Dis(A)321/ 2014, dated 06.04.2015 as illegal and beyond the

powers conferred under the Act 9 of 1977; and to declare that the third respondent has no jurisdiction to determine appeal and to issue proceedings in Roc.G/ 7955/ 13, dated 07.10.2014 which is subjudice in O.S.No.413 of 2013 on the file of the Principal Junior Civil Judge, Chittoor. It is urged that the dispute involved in both the cases are different and there is no necessity for tagging this revision with the writ petition.

8) Un-disputed facts are that the plaintiff filed O.S.No.413 of 2013 on the file of the Principal Junior Civil Judge, Chittoor, seeking injunction. By an order dated 25.11.2013, vide I.A.No.597 of 2013 temporary injunction was granted in favour of the plaintiff, which is still in force. C.M.A.No.33 of 2015 came to be filed assailing the said order but no interim orders are passed, in spite of an application seeking suspension of the injunction order being filed. Since the defendant is interfering with the property in dispute in spite of an injunction order, the plaintiff filed an application seeking police aid. It is to be noted that even earlier also the plaintiff filed an application for police aid which was closed giving liberty to the plaintiff to move an application at an appropriate stage.

9) The question now is whether the plaintiff is entitled for police protection, when C.M.A. filed against an order granting temporary injunction, is still pending.

10) A perusal of the material placed before the Court would show that the plaintiff filed W.P.No.12845 of 2015 before this

Court questioning the jurisdiction of the third respondent therein in issuing the impugned proceedings. By an order dated 07.05.2015, this Court ordered *status quo* as on that day to be maintained. Vide proceedings dated 07.10.2014, the Revenue Divisional Officer while entertaining the appeal filed by the petitioner, held as under:

“Whether the relief sought for by the appellant could be considered if so to what extent is concerned the Tahsildar is directed to address all the concerned agencies to keep the DKT patta, pattadar pass book and title deed pertaining to S.No.14/ 3 of Nallarallapalle village considered, if any, in favour of Smt. P.Anjali, W/o. K.Murali in as “in animation” position till such time the genuineness of the documents in question are confirmed by the Tahsildar, Gangadhar Nellore, within a period of three months from the date of receipt of these orders. Thus, the appeal is disposed off with the above observations. However, the appellant cannot claim any rights on the schedule land unless they were given proper authentication”.

11) Pursuant thereto, the Tahsildar, vide proceedings dated 06.04.2015 passed the following order:

“In the above circumstances it could eventually be concluded that Smt. Anjali possesses non-genuine documents and therefore it is hereby ordered for cancellation of the following documents duly treating them as non-genuine documents in as much the petitioner has failed to produce them to ascertain their veracity through different modes provided under law.

1. Xerox copy of the D.Form-7
2. Xerox copy of the pattadar pass book,
3. Xerox copy of the title deed
4. Xerox copy of Mee-seva Kendra Adangal/
pahani extract,
5. Xerox copy of the Mee-seva Kenda 1-B1 B
Namuna Fasli 1422/ 2013
6. Adangal 10 (1) dated 27.12.2016
7. V.R.O. Certificate dated 25.12.2013
8. Electricity Certificate Service No.1801 and
1802 along with recommendation of electricity
services by Tahsildar
9. Surveyor Sketch,

These orders are passed in strict compliance of the orders dated 07.10.2014 passed by the Revenue Divisional Officer, Chittoor in proceedings Roc.G/ 7955/ 2013 consequent on the disposal of the appeal over the government land in S.No.14/ 3 extent Ac.3.67 cents purported to have considered on assignment in favour of Smt. Anjali.”

12) The order of the Tahsildar canceling the pattadar pass book and title deed which were issued in favour of the plaintiff is subject matter of challenge in the writ petition. As observed earlier, this Court granted *status quo* to be maintained. The said order of *status quo* is still in force. The injunction order passed by the trial Court is much prior to the order of this Court in W.P.No.12845 of 2015.

13) The issue of granting police protection came up for consideration in *P.R.Muralidharan and otherswami*

*Dharmananda Theertha Padar and others*¹ wherein, the Apex Court held as under:

“It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which was beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. The respondent no.1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stares on his face. He, therefore, could not have filed a writ petition for getting the self same issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution of India, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the document alone, but it required adduction of oral evidence as well. Such evidence was necessary for

¹ (2006) 4 SCC 501

the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye- laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.”

14) Similarly in *Abhish Kumar and others v. State of Telangana and others*² this Court also dealt with the issue of giving police protection in an application filed under Article 226 of the Constitution of India. Relying upon the judgment of the Apex Court referred to above, a learned Single Judge of this Court held that “this Court would be entitled to exercise jurisdiction under Article 226 of the Constitution and direct the police authorities to provide due protection so as to secure compliance with the interim injunction granted by the trial Court.

15) As per the judgment of this Court referred to above, it is clear that having regard to the facts and circumstances of the case, the Court can grant police aid to provide adequate protection, and to secure compliance of the interim injunction order. That being the position, the pendency of the writ petition, wherein the jurisdiction of the Tahsildar and Revenue

² (2016) 4 ALD 518

Divisional Officer came to be questioned with regard to passing of the order should not come in the way of granting police protection. It is also to be noted that there is an order of granting *status quo* to be maintained, but at the same time there is an order passed by the Court below granting temporary injunction which is subject matter of challenge in C.M.A.No.33 of 2015. In spite of there being an application seeking suspension of the injunction order, no orders are passed therein.

16) In view of the judgment of this Court referred to above and having regard to the facts and circumstances stated above, I see no illegality in granting police aid so as to ensure implementation of the injunction granted. However, it is made clear that the plaintiff shall not misuse the order of police protection and it is to be strictly used for the purpose of which it has been granted. Since the C.M.A.No.33 of 2015 and I.A. filed seeking suspension of injunction order is still pending consideration, the appellate Court shall dispose of the said I.A. at the earliest. In case, orders are already passed in I.A., the appellate Court shall hear the C.M.A. and pass orders in accordance with law, as early as possible, within a period of three (03) months from the date of receipt of a copy of the order.

17) With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs.

18) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.02.2017
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