

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5795 OF 2017

ORDER:

Order dated 08.09.2017 allowing C.M.A. No. 3 of 2017 on the file of the Senior Civil Judge's Court at Dharmavaram, whereby and whereunder the order dated 06.03.2017 passed by the Principal Junior Civil Judge, Dharmavaram in I.A. No. 10 of 2017 in O.S. No. 1 of 2017 was dismissed, is assailed in this Revision.

I.A. No. 10 of 2017 was filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure for grant of temporary injunction restraining the respondent herein, his men and agents from interfering with the peaceful possession and enjoyment of the petitioner over the petition schedule property pending disposal of the suit.

In the order dated 06.03.2017 in I.A. No. 10 of 2017, the trial Court, categorically found that the petitioner/plaintiff, though had title only with respect to Ac.0.05 cent of land, by virtue of the patta granted in favour of his father, in view of the finding recorded in O.S.No. 48 of 1999 filed by the respondent/defendant seeking to evict the petitioner/plaintiff, it is clear that the petitioner is in possession of not only Ac.0.05 cent of land allotted to him, but also other extents, which were sought to be recovered by the defendants. The trial Court, following the well-considered principle that basically for grant of temporary injunction, what is required to be satisfied is the factum of 'the claimant being in possession of the property' and in the light of the conclusion arrived that the petitioner/plaintiff is in possession of the land, granted injunction on 02.01.2017 and further, the same was made absolute. Though, in the Appeal filed by the respondent/defendant, the appellate

Court did not disturb this finding, however, construed that the petitioner/plaintiff had suppressed the fact that the defendant/appellant was also given Ac.0.05 cent of land by way of patta and on account of suppression of the said fact, the petitioner was held to be ineligible for grant of equitable relief of injunction.

Heard learned counsel for the petitioner Sri Maheswara Rao Kunchem and Sri Aswartha Narayana, learned counsel for the respondent.

Perused the record. The only ground on which the injunction granted in favour of the petitioner pending disposal of the suit was vacated by the appellate Court is, the allegation of suppression of the factum of grant of patta in favour of the defendant in 1992. A close examination of the order of the trial Court, particularly para 11, discloses, that, as a matter of fact, it had mentioned about grant of patta in favour of the respondent/defendant. It may also be noted that on the said premise, on the earlier occasion, the respondent was unsuccessful in O.S.No. 48 of 1999, wherein a categorical finding was recorded that though the petitioner had patta only with respect to Ac.0.05 cent, he was, in fact, in physical possession of the other extents of land adjacent to the residential house. In the facts and circumstances of the case, that finding having not been disturbed by the appellate Court, it ought not to have interfered with the well-considered order of the trial Court.

Hence, the Civil Revision Petition is allowed. Pending disposal of the suit, both the parties shall maintain *status quo* obtaining as on today. No costs.

CHALLA KODANDA RAM, J

17th November 2017

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