

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5530 of 2017

ORDER:

1) Assailing the order, dated 05.10.2017, passed in I.A.No.211 of 2017 in A.S.No.71 of 2011 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Tirupati, wherein an application filed under Order 41 Rule 25 and Section 151 of C.P.C., to frame the proposed issue for proper and effective adjudication of the appeal, was dismissed, the present Civil Revision Petition is filed.

2) Respondents 1 to 18 herein filed O.S.No.345 of 2006 seeking permanent injunction restraining the petitioner herein and his men etc., from in any way interfering with the peaceful possession and enjoyment of the plaint schedule properties. After considering the oral and documentary evidence adduced by both the parties, the trial Court decreed the said suit. Aggrieved by the same, the petitioner herein filed A.S.No.71 of 2011. Pending appeal, the petitioner herein filed a petition to frame an issue namely "whether the suit filed by the plaintiffs for permanent injunction without the relief of declaration is maintainable" ?

3) Respondent No.12 filed counter contending that suit for mere injunction is maintainable without seeking the relief of declaration of title. It was also stated that earlier the petitioner

filed a memo not pressing the appeal but subsequently not press the said memo. Only to protract the litigation, the petitioner filed the present petition.

4) Respondent Nos.26 to 30 filed separate counter stating that after advancing the arguments, the petitioner filed the petition with a view to delay the proceedings and to harass the senior citizens, who are the respondents.

5) After considering the rival submissions made, the Court below dismissed the said petition. Challenging the same, the present Civil Revision Petition came to be filed.

6) Learned counsel for the petitioner would submit that the suit for permanent injunction without seeking declaration of title is not maintainable. In the absence of framing of an issue regarding title, the petitioner had no opportunity to lead evidence effectively on the question of title. Hence, he seeks for framing of an issue.

7) Learned counsel appearing for respondent No.26 would submit that the plaintiffs established their possession over the suit property by producing oral and documentary evidence and the trial Court rightly decreed the suit. It is further argued that when the appeal was filed in the year, 2011, no reasons are given as to why the petitioners took 6 years time to file this petition, more so when the case is posted for arguments. It is pleaded that the issue now sought to be raised was urged before the trial Court as well.

8) Before proceeding further it would be useful to refer to the findings of the trial Court.

“ Since the plaintiffs proved their possession and the same was protected by the Court without causing inconvenience to the plaintiffs and the plaintiffs can maintain suit for permanent injunction without asking the relief of declaration of title. The plaintiffs established their possession over the suit property as on the date of the suit and the same is proved by the plaintiff in oral and documentary evidence. The defendant has not filed any pattadar passbook and ryotwari patta, which were issued by the Deputy Tahsildar in favour of Appa Rao and transferred to the vendor of the defendant. In the absence of the same, it cannot be said that the defendant has been in possession and title over the property.”

9) From the above, it is clear that though a separate issue “whether the suit is bad for not seeking the declaration”, was not framed but the same was considered by the trial Court in its judgment.

10) In *Ananthula Sudhkar v. P.Buchi Reddy (dead) by L.R.s and others*¹ the Apex Court dealt with an issue that the suit for permanent injunction without seeking declaration of title is maintainable. Relying on the judgment of the Apex Court in *Sulochana Amma vs. Narayanan Nai*², the Court held as under:

“17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

¹ Appeal (Civil No.) 6191 of 2001

² (1994) 2 SCC 14

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simplicitor."

11) From a reading of the judgment it is clear that if the possession is established and there is an interference with the said possession, it is sufficient to sue for an injunction simplicitor. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simplicitor will lie. A person has a right to protect his possession against any person, who does not prove a better title by seeking a prohibitory injunction. In the instant case, the plaintiffs' possession over the property as on the date of the suit was upheld by the trial court. The petitioner/ defendant failed to establish his possession by adducing oral and documentary evidence before the trial Court.

12) Further, the appeal is posted for arguments and the petitioner did not take any steps at the earliest. No reasons are given as to why he kept quiet for six years. For the reasons stated above and in view of the judgment referred to above, I see no reasons to interfere with the order passed by the Court below.

13) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

14) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.11.2017

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