

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.5517 and 5520 OF 2017

COMMON ORDER:

The Civil Revision Petition No.5517 of 2017 is filed under Article 227 of Constitution of India questioning the legality and propriety of the order dated 22.09.2017 passed in I.A.No.333 of 2016 in O.S.No.306 of 2016 by the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam granting temporary injunction in favour of the respondent No.1 herein restraining the petitioners herein in a petition filed under Rule 42 (a) and (c) of A.P.Agency Rules, 1924 and under Section 151 of Code of Civil Procedure (for short "C.P.C.").

The Civil Revision Petition No.5520 of 2017 is filed under Article 227 of Constitution of India questioning the legality and propriety of the order dated 22.09.2017 passed in I.A.No.317 of 2016 in O.S.No.286 of 2016 by the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, declining to grant temporary injunction in favour of the petitioners in a petition filed under Rule 42 (a) and (c) of A.P.Agency Rules, 1924 and under Section 151 of Code of Civil Procedure (for short "C.P.C.").

The parties and the allegations in both the revisions and the subject property is one and the same, and the impugned orders passed by the trial Court are almost identical, hence both the revisions can be decided by common order.

For convenience sake, I would like to advert to the facts as narrated in C.R.P.No.5517 of 2017.

C.R.P.No.5517 of 2017:

The respondent No.1 herein claimed that he is in peaceful possession and enjoyment of the property shown in the schedule annexed to the I.A.No.333 of 2016 and sought for interim injunction against the petitioners herein. The petitioners contested the matter before the Court below, but the Sub-Divisional Magistrate passed the impugned order based on documents produced before him including the report of the Tahsildar, Charla in Rc.No.B/778/2017 dated 19.08.2017.

The present revision is filed to set aside the impugned order on the ground that the order is bereft of any reasoning about three requirements to grant temporary injunction during pendency of the suit, that apart calling for report from the Tahsildar to pass interim injunction is against law in view of the principle laid down by this Court in “**Maloth Veeru @ Heerala and others v. Guguloth Mangi¹**”

During hearing, learned counsel for the petitioners mainly drawn the attention of this Court to the findings recorded by the Court below, consideration of material available on record and failure to mark any document, and contended that the Court below considered certain documents more particularly adangals, land revenue receipts to accept the possession of the respondent No.1 herein and the findings recorded by the Court below are erroneous and not based on any material and prayed to set aside the order passed by the Court below.

Learned counsel for the respondent No.1 supported the order passed by the Court below and drawn the attention of this Court to

¹ 2012 (2) ALD 455

the last paragraph of page No.4 of the impugned order, where the Sub-Divisional Magistrate discussed about the material on record and also the report of the Tahsildar.

As seen from the material on record, the respondent No.1 claiming to be the owner of the property being the possessor of schedule property and sought permanent injunction in the suit and temporary injunction during the pendency of the suit and the basis for claiming possession is payment of land revenue, adangals of the village, proceedings initiated by the Executive Magistrate under Section 145 based on the report of the S.I. of police and granting interim order in W.P.No.29576 of 2016 setting aside the order passed by the Tahsildar.

Petitioners herein also claiming possession over the property, but none of the parties produced any documents as per the order under challenge. No documents are marked and adverted to by the Sub-Divisional Magistrate. While deciding the application filed under Rule 42 (a) and (c) of A.P.Agency Rules, 1924 and under Section 151 of C.P.C., the Sub-Divisional Magistrate is required to record specific findings regarding as to three requirements, which are *singua non* for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable injury. In the absence of such findings, the order cannot be sustained.

In penultimate paragraph of page No.5 of the impugned order, the Sub-Divisional Magistrate observed that the respondent No.1 established his *prima facie* possession. Prima facie possession is different from *prima facie* case and these two cannot be confused. *Prima facie* case means a case to go for trial or substantial question to be decided during trial.

In the impugned order, the Sub-Divisional Magistrate though recorded a finding that the respondent No.1 herein able to establish the *prima facie* possession, which is not the basic requirement to grant temporary injunction, but the Sub-Divisional Magistrate is required to record a finding as to *prima facie* case, apart from that the Sub-Divisional Magistrate called for the report of the Tahsildar, in turn the Tahsildar called for the report of the V.R.O. and on the basis of the report of V.R.O., the Tahsildar submitted his report in Rc.No.B/778/2017 dated 19.08.2017, as observed in paragraph No.1 of page No.5 of impugned order, and on the basis of the said report the Court below accepted the possession of the respondent No.1.

This Court in “**Maloth Veeru @ Heerala and others v. Guguloth Mangi**” (referred supra) specifically held that granting temporary injunction based on the report of Tahsildar is illegal. It is clear from the material on record that the Court below did not pass the order only on the basis of report of Tahsildar, but also considered the other material. But consideration of report of Tahsildar to accept *prima facie* possession is an apparent error on the face of record. Therefore, taking into consideration of the facts and circumstances of the case, failure of the Sub-Divisional Magistrate to record specific findings as to *prima facie* case vitiates the entire order, thereby the order is set aside while remanding the matter to the Court below to dispose of the matter in accordance with law after marking documents and record specific findings with regard to three requirements to grant temporary injunction and dispose of the same within one month from the date of receipt of a copy of this order.

In the result, the revision petition is allowed and the matter is remitted back to the Court below to record specific findings with regard to three requirements to grant temporary injunction and dispose of the same within one month from the date of receipt of a copy of this order.

C.R.P.No.5520 of 2017:

In view of the detailed order passed in C.R.P.No.5517 of 2017, this revision is also allowed and the matter is remitted back to the Court below to record specific findings with regard to three requirements to grant temporary injunction and dispose of the same within one month from the date of receipt of a copy of this order.

The miscellaneous petitions pending, if any, shall also stand closed.

22.12.2017

Note:

Issue C.C.by 29.12.2017

B/o
Ksp

JUSTICE M. SATYANARAYANA MURTHY