

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5369 of 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 06.9.2016 in C.M.A. No.19 of 2014 on the file of the Court of Principal District Judge, Khammam, wherein and whereby the order dated 24.6.2014 in I.A. No.21 of 2014 in O.S. No.4 of 2014 on the file of the Court of Senior Civil Judge, Khammam dismissing the application filed under Order XXXIX Rules 1 and 2 CPC seeking interim injunction, was affirmed.

2. The petitioner is the plaintiff and the respondent Nos.1 and 2 are defendant Nos.1 and 2. The parties will hereinafter be referred to as they are arrayed before the trial Court in I.A. No.21 of 2014.

3. The contention of learned counsel for the petitioner is threefold: (1) the trial court ought not to have given a finding in the interlocutory order touching the merits of the main case; (2) the finding of the trial court that the vendor of the petitioner has no title over the suit schedule property is not sustainable either on facts or in law; and (3) the finding recorded by the courts below are based on assumptions and presumptions; therefore, this is a fit case to allow the revision. ***Per contra***, learned counsel for the respondents has made the following submissions: (1) the trial court has considered the discrepancy in the title deed and pattadar passbooks of the petitioner in right perspective; (2) the revisional court shall not lightly interfere with the concurrent finding of fact record recorded by the courts below; and (3) the findings recorded by the courts below are supported by the material available on

record; therefore, it is a fit case to dismiss the civil revision petition.

4. The facts leading to filing of the present civil revision petition are briefly as follows: The petitioner filed O.S. No.4 of f 2014 on the file of the Court of Senior Civil Judge, Khammam against the respondents seeking perpetual injunction in respect of an extent of Acs.1.04 guntas of land in survey No.57/AA/2 of Gurralapadu Revenue Village, Khakkam Rural Mandal, Khammam District. The petitioner and his brother have purchased an extent of Acs.2.22½ guntas in the said survey number under an unregistered sale deed dated 09.10.1973 and ever since they have been in possession and enjoyment of the same. In the family partition, the petitioner got the suit schedule property. Since the respondents are interfering with peaceful possession and enjoyment of the suit schedule property by the petitioner, he filed the suit seeking perpetual injunction against the respondents. Along with the suit, the petitioner filed I.A. No.21 of 2014 seeking ad interim injunction. The trial Court granted *ex parte* interim injunction in favour of the petitioner. After receipt of the notice, the respondents appeared and filed counter opposing the claim of the petitioner *inter alia* contending that the alleged vendor of the petitioners, by name Abbulu, has no right or title over the suit schedule property. The petitioner never in possession and enjoyment of the suit schedule property; therefore, he is not entitled to seek interim injunction. During the course of enquiry, on behalf of the petitioner, Exs.P1 to P11 were marked. On behalf of the respondents, Exs.R1 to R16 were marked. After having thoughtful consideration to the documentary evidence and other material available on record, the

trial court arrived at a conclusion that the petitioner failed to prove *prima facie* case, balance of convenience in his favour and irreparable loss likely to be caused to him if the interim injunction is not granted in his favour. In consequence of the conclusion, the trial court vacated the *ex parte* injunction granted in favour of the petitioner and dismissed the petition. Feeling aggrieved by the order of the trial court, the petitioner preferred CMA No.19 of 2014 on the file of the Court of Principal District Judge, Khammam. The learned District Judge, after hearing both sides, arrived at a conclusion that the petitioner is not entitled for interim injunction and dismissed the CMA. Hence, the present civil revision petition.

5. To substantiate the arguments, learned counsel for the petitioner has drawn attention of this Court to the judgments in **N.Laxman Dev v Nagarjuna Constructions Engineer and Builders¹**, **M.Chinnayya @ Ganganna v M.Sudhakar²**, **Madala Kotaiah v M/s.Hamsa Minerals & Exports³**, **Bruce v Silva Raj⁴**, **Ashwinikumar K. Patel v Upendra J. Patel⁵**, **Anand Prasad Agarwalla v Tarkeshwar Prasad⁶**, **Dhariwal Industries Ltd., v M.S.S. food Products⁷** and **Julien Educational Trust v Sourendra Kumar Roy⁸**. As per the principle enunciated in those cases, while deciding the applications for temporary injunctions, the court ought not to have expressed any opinion touching the merits of the main case. The learned counsel for the petitioner

¹ 2003 (2) ALD 208

² 2010 (3) ALD 89

³ 2011 (6) ALT 19

⁴ 1987 (supp) SCC 161

⁵ (1999) 3 SCC 161

⁶ (2001) 5 SCC 568

⁷ (2005) 3 SCC 63

⁸ 2010 (2) ALD 55 (SC) + (2010) 1 SCC 379

also drawn the attention of this Court to the decision in **Salapu**

Ramana v Salapu Sanyasirao⁹. Paragraph No.6 reads as follows:

6. At the interlocutory stage, the trial Court has to depend mostly upon the documentary evidence. The pattadar passbooks and title deeds issued in favour of the parties assume significance, in view of the presumption provided for under the Act. It may be true that the entries in 10B register constitute the basis for issuing a pattadar pass book. However, if the pattadar pass book is issued in respect of a piece of land, ignoring the entries in 10B register, it would constitute a ground for the aggrieved party, to prefer appeal under Section 50B of the Act. As long as the pattadar pass book remains, the presumption deserves to be drawn and the Court cannot ignore the same.

6. The learned counsel for the petitioner also drawn the attention of this Court to the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 and the Rules made thereunder (herein after referred to as, the Act and the Rules). A perusal of Section 6 of the Act makes it clear that the court can draw a presumption as to correctness of entries in record of rights. A perusal of Rule 26 clearly reveals that the court can place *prima facie* reliance on pattadar pass books and title deeds, which were normally issued in favour of the owners of the land.

7. Let me consider the facts of the case on hand in the light of the principle enunciated in the cases cited supra. It is needless to say that while deciding *ad interim* injunction petition, the court has to see whether the petitioner has proved *prima facie* case, whether the balance of convenience is in his favour and if no injunction is granted will it cause irreparable loss to him. It is a settled principle of law that while deciding the interlocutory applications; the court cannot go into the merits of the main case. While passing the orders in the petitions for temporary injunction, the court has to consider whether the petitioner was *prima facie* in

⁹ 2014 (1) ALT 256 (1) (S.B.)

possession of the suit schedule property as on the date of filing of the suit or not. For that limited purpose, the court can place *prima facie* reliance on the documents filed by both parties. It is the case of the petitioner that he and his brother purchased the property from one T.Abbulu in the year 1973 under an unregistered sale deed. Thereafter, in the family partition between the petitioner and his brother, the suit schedule property fell to the share of the petitioner. To substantiate his case, the petitioner has placed reliance on Ex.P1 Title deed book, Ex.P2 Pattadar pass book, Ex.P3 certificate of pahanies for the year 2013, Ex.P9 proceedings issued by the Gram Panchayat, Ex.P10 copy of the challan issued by the Gram Panchayat, and Ex.P11 unregistered and unstamped sale deed dated 09.10.1973. Both the courts gave a specific finding that the vendor of the petitioner was not having right or title over the extent of Acs.2.22½ guntas of land in survey No.57/AA/2 of Gurralapadu village even though the suit filed to an extent of Acs.1.02 guntas. I am unable to understand how the courts below have given such a finding while deciding the petition for temporary injunction, by ignoring the scope of Order XXXIX Rules 1 and 2 CPC. If the finding of the trial court is allowed to stand, certainly it would adversely affect the rights of brother the petitioner, who is not a party to the suit.

8. The courts below have not considered the scope of Section 6 of the Act and Rule 26 of the Rules while considering the Exs.P1 to P3, the documents issued by the Revenue authorities. One of the findings recorded by the Courts below is that the petitioner failed to establish that he has been in possession and enjoyment of the suit schedule property ever since 1973. Such a finding is

unwarranted while deciding the petition for temporary injunction. As observed earlier, while deciding the petition for temporary injunction, the court has to follow the cardinal principles of establishment of *prima facie* case, balance of convenience is in favour of the petitioner and irreparable loss that may cause if the *ad interim* injunction is not granted in favour of the petitioner. Even while deciding the suit for perpetual injunction, the Court ought not to consider the title of the parties. In a suit for perpetual injunction, the main requirement to be established by the plaintiff is whether he was in possession of the suit schedule property as on the date of filing of the suit or not. The Courts below decided the validity or otherwise of the documents filed by the petitioner, while deciding the petition filed under Order XXXIX Rule 1 CPC, unmindful of consequences that flow from that order.

9. At the time of the arguments, learned counsel for the respondents strenuously submitted that the High Court in exercise of supervisory jurisdiction under Article 227 of Constitution of India will not convert itself into a Court of appeal and indulge in reappraisal or evaluation of evidence or correct errors. To substantiate the argument, learned counsel for the respondents has drawn the attention of this court to the judgment in **Shahabhanu @ Susheela Bai v Saval Sakharam**¹⁰. I am fully agreeing with the submission made by the learned counsel for the respondents. At the same time, this court shall not close its eyes and glibly swallow the wrong findings recorded by the courts below ignoring the legal principles that should be followed while arriving at such conclusions. If the findings recorded by the Courts below

¹⁰ 2015 (5) ALT 265

are not in accordance with law, certainly this court, while exercising the jurisdiction under Article 227 of the Constitution of India, can undoubtedly interfere with and set aside the same.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases (1 to 9) cited supra, I am of the considered view that it is a fit case to allow the civil revision petition by setting aside the findings recorded by the courts below.

11. Accordingly, the civil revision petition is allowed, setting aside the order dated 06.9.2016 in C.M.A. No.19 of 2014 on the file of the Court of Principal District Judge, Khammam, confirming the order dated 24.6.2014 in I.A. No.21 of 2014 in O.S. No.4 of 2014 on the file of the Court of Senior Civil Judge, Khammam. The trial court is hereby directed to pass orders I.A. No.21 of 2014 on merits, afresh, in accordance with law, after affording reasonable opportunity to both the parties, within a period of six weeks from the date of receipt of a copy of this order, without being influenced by any of the observations made hereinabove as the same are confined only for the purpose of disposal of this revision petition. Miscellaneous petitions, if any pending in this civil revision petition shall stand closed.

T.SUNIL CHOWDARY, J

January 05, 2017.
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