

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 502 of 2018

ORDER:

The order, in C.M.A.No.5 of 2017 dated 01.08.2017, refusing to grant injunction, in I.A.No.2228 of 2015 in O.S.No.529 of 2015 dated 13.02.2017, is challenged before this Court.

Heard the learned counsel for the petitioner and Sri Virupaksha Dattatreya Gouda, learned Counsel for respondent.

Learned Counsel for the petitioner contends that, in view of Ex.P.1 – pattadar pass book; Ex.P.2 – 1-B Extract; Ex.P.3 – Adangal Extract issued by Tahsildar dated 24.08.2015; Ex.P.4 – Confirmation Certificate with boundaries issued by the VRO; and Ex.P.5, proceeding issued by the Tahsildar, Kuderu, there cannot be any dispute that the petitioner –plaintiff is in possession of an extent of Ac.2.50 cents in Sy.No.365-3A; there was no reason for both the Courts below to take into consideration and rely on the documents, particularly, Exs.R.1 to R.10 filed by the respondent – defendant; Ex.R.7, on which reliance has been placed, is only a letter addressed by the respondent to the Revenue Divisional Officer, and the same cannot be the basis for ignoring the documents viz. pattadar pass books and 1B extract which were issued in favour of the petitioner – plaintiff by the authorities.

On the other hand, learned counsel for the respondent submits that Ex.R.7 is the letter by respondent to Revenue Divisional Officer for deletion of wrongful mutation in wet land; and the said correction was sought by the respondent based on other documents, particularly, with respect to tracing his title. It is further stated that Ex.R.10, field map, does not indicate there being any sub-division of land in Sy.No.365; the Courts below cumulatively assessed the merits and refused to grant injunction order; and prayed for dismissal of the revision.

Having considered the respective submissions, at the outset, it may be noted that it is for the petitioner – plaintiff to make out a positive case for grant of injunction and, particularly, satisfy the Courts below that he/she is in possession of the property. Initially, temporary injunction was granted in favour of the petitioner – plaintiff and the same was vacated by making a reasoned order. The learned Judge had taken into consideration Ex.R.8, Mandal Surveyor Report, Ex.R.9 – MRO report evidencing respondent to be in possession; and Ex.R.10 – Field Map of Sy.No.365. The documents placed before the Court below, *prima facie*, negated the claim of the petitioner of there being sub-division in Sy.No.365. The total extent available in Sy.No.365 is Ac.22.40 cents and there being five sub-divisions viz. Sy.No.365-1 of Ac.2.40 cents; Sy.365-2 of Ac.5.00; Sy.No.365-3 of Ac.5.00; Sy.No.365-4 of Ac.5.00;

and Sy.No.365-5 of Ac.5.00. Ex.R.8, however, does not indicate of any sub-division other than the sub-division mentioned therein. Ex.R.10 – field map is in conformity with Ex.R.8. In those circumstances, both the Appellate Court and Trial Court had taken these aspects into consideration and came to the conclusion that, *prima facie*, petitioner is not in possession as claimed by her. There being no valid reasons to come to a different conclusion, the revision petition is dismissed. It is made clear that the findings shall not be construed as Courts having expressed any opinion on the merits of the case which needs to be decided on trial and appreciation of evidence that may be produced before the Trial Court.

Miscellaneous petitions pending, if any, shall stand disposed of. No order as to costs.

CHALLA KODANDA RAM,J

Date:03.04.2018
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