

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETION No.1118 of 2017

ORDER:

This Civil Revision Petition is filed against the order dated 8.11.2016 passed in I.A.No.500 of 2016 in ATC.No.4 of 2016.

The parties to the proceedings in I.A.No.500 of 2016 in ATC.No.4 of 2016 are Annadasu Chinna Apparao, Petitioner and Bhrugubanda Venkata Amareswara Narasimha Dattatreylu, Bhrugubanda Venkata Gopalakrishna, Bhrugubanda Venkata Hara Jagannadha Rao, Bhrugubanda Venkata Bhujanga Rao and Bhrugubanda Venkata Viswanath, Respondents 1 to 5. Initially, the lower Court granted *ex parte* injunction on 9.6.2016. The said injunction was in force. Later, it appears that on 8.11.2016 one Sri S.Subba Reddy, counsel for Respondent Nos. 2 to 4 filed an affidavit and memo both dated 8.11.2016 stating that there is an *ex parte* ad-interim injunction pending, which was granted in IA.No.763 of 2016 in O.S.No.252 of 2016 on the file of the Senior Civil Judge, Sattenpalli. Perusing the said memo, the lower Court passed the impugned order on 8.11.2016. The said order dated 8.11.2016 is the subject matter of challenge in this petition.

Learned counsel for the petitioner Sri N.Chandradhar Rao submits that the said affidavit was filed by the counsel for the respondents and not by the parties themselves. He states that the affidavit of the counsel should not have been accepted in a situation like this, particularly, when the prayer is for vacating the *ex parte* order. He also submits that on 8.11.2016 itself, the lower court proceeded to vacate the *ex parte* injunction order granted without ordering notice or even hearing his party. Therefore, he submits that the order dated 8.11.2016 deserves to be set aside. He further submits that the lower court was wrong in

assuming that Civil Court was superior to the Tribunal constituted under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 and relied upon the judgment in ***Muramalla Ammannaraju v. Babba Seetaratnam***¹ wherein it is held that revision does not lie to the High Court under Section 115 of the Code of Civil Procedure against the orders passed by such Tribunals as the Tribunals are not subordinate to the High Court.

In reply, learned counsel for the respondents submits that the suit filed is a collusive suit. He draws the attention of this Court to the counter affidavit filed by him wherein he stated in paragraphs 6 and 7 that the petition schedule property was partitioned in the year 1983-84 itself and also that the same is the subject matter in O.S.No.74 of 2008 on the file of Principal District Judge, Guntur. He further states that his clients are in possession of the property and therefore, the contention of the petitioner that he is in possession of the property itself is not correct. He also submits that the impugned order was passed in November, 2016 and even as on the date, there was no complaint from the petitioner that there was threat of dispossession and therefore, there is no need to grant any order in favour of the petitioner.

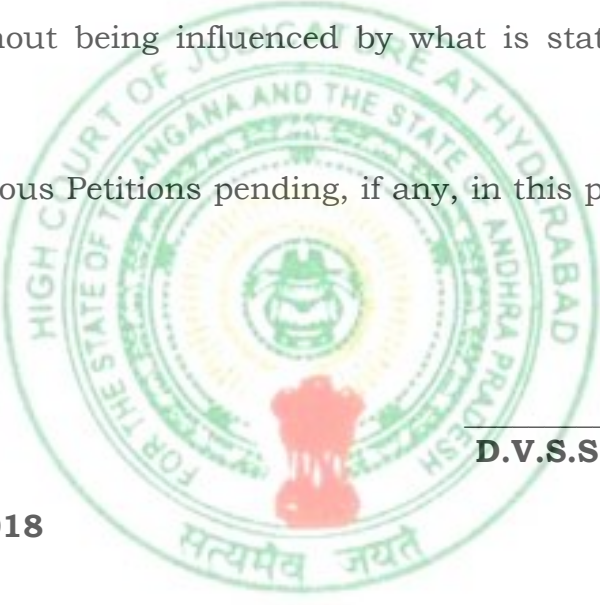
After hearing both the learned counsel, this Court is of the opinion that the impugned order passed by the lower Court appears to have been passed in haste. The memo and affidavit of the advocate for the respondents should not have been accepted by the Court, particularly, when an order of injunction was proposed to be vacated. The lower Court should have been cautious in acting upon the affidavit of the counsel, particularly, when he pleaded on merits of the matter. The Court should have insisted that the affidavit should have been filed by the parties to the proceedings. In addition, the lower Court should have

¹ LAWS (APH) 1993 9 19

also issued notice to the petitioner who is also the petitioner before the lower court for hearing, before vacating the order that was granted. It is a fundamental tenet of our jurisprudence; and of the rules of natural justice that a person should be heard before any orders are passed.

Therefore, this Court is of the opinion that the order dated 8.11.2016 passed in I.A.No.500 of 2016 is not sustainable in law and deserves to be set aside and is accordingly set aside. The Civil Revision Petition is allowed and the matter is remanded back to the lower court. The lower court is directed to hear the I.A.No.500 of 2016 afresh after giving opportunity to both the parties to raise their respective contentions without being influenced by what is stated in the current order.

Miscellaneous Petitions pending, if any, in this petition shall stand closed.



D.V.S.S.SOMAYAJULU,J

Date: 04/01/2018

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