

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.418 OF 2018

ORDER:

1. Heard Sri M.Ajay Kumar, learned counsel for the petitioner and Sri Venkateshwar Varanasi, learned counsel for the respondents.

2. The suit for perpetual injunction restraining the defendants, their men, agents from interfering in any manner with peaceful possession and enjoyment of the plaintiff, over the suit schedule property, was decreed in favour of the petitioner vide judgment dated 13.09.2017 in O.S.No.1318 of 2008. The trial Court observed that the defendant has not proved his title *prima facie* and no evidence to believe that defendant is the owner of Ac.0.16 gts of land in his favour. The trial Court further held that there is no cloud over the property and thereby, the suit for injunction is maintainable and the plaintiff proved that he is in peaceful possession and enjoyment of the property as on the date of the suit for the suit schedule property. The suit schedule property comprises of Ac.0.26 gts in Survey No.327 situated at Venkatapur Village, Zaftergadh Mandal, Warangal District. Aggrieved by the said judgment and decree, the defendants filed A.S.No.143 of 2017 before the II Additional District Judge, Warangal. In I.A.No.1118 of 2017, the appellate Court granted stay of execution of the judgment and decree of the trial Court. Challenging the same, this revision is filed.

3. Learned counsel for the petitioner would submit that petitioner is in possession and enjoyment of the suit schedule property all along and the respondents-defendants were trying to interfere with the peaceful possession and enjoyment of the petitioner. False claim of ownership made by respondents was rejected and the trial Court granted decree in their favour. It is submitted that no material placed to show how the balance of convenience is in favour of the defendants to stay execution of the judgment and decree.

4. **Per contra**, learned counsel for the defendants-respondents submits that the trial Court has exercised its discretion in granting suspension of the judgment and decree; that the defendants are in possession and enjoyment of Ac.0.16 gts of land, whereas the plaintiff is in possession and enjoyment of only Ac.0.12 gts of land.

5. By placing reliance on the decision of this Court in **Muddana Subba Reddy v. Muddana Kullayi Reddy**¹. He would submit that the appellate Court exercised discretion in granting the relief.

5.1. In the said decision it is held that where appellate Court exercises discretion in granting stay of operation of judgment and decree granted in favour of the plaintiff, the High Court, in exercise of revisional jurisdiction, should not interfere.

5.2. He placed reliance on the following paragraph:

¹ 2006 (1) ALT 18

“As can be seen from the facts of the case, this is a matter where the revision petitioner as plaintiff in O.S. No. 61 of 2002 on the file of the Junior Civil Judge, Jammalamadugu, obtained a decree for perpetual injunction and also mandatory injunction. The reasons in detail had been recorded by the learned Judge while granting stay of operation of the decree. In view of Order 41, Rule 5 read with Order 21 Rule 32(1) of CPC, the decree for perpetual injunction is an executable decree and hence, the same can be stayed. The said view was expressed in **M. Ramachandra Reddy v. Challa Janaki and Ors.** {1984(1) ALT 387}. It is true that in **Pothuru Venkata Rama Raju v. Yandra Venkata Narasayya and Ors.** {1997 (5) ALT 766}, another learned Judge of this Court came to the conclusion that a decree for perpetual injunction is not executable and hence, the same cannot be stayed under Order 41 Rule 5 of CPC, but, it can be suspended depending upon the circumstances. In the light of the view expressed in **Moolchand Yadav v. Raza Buland Sugar Company Limited, Rampur and Ors.** {(1982)3 SCC 484} and the view expressed in **M. Ramachandra Reddy v. Challa Janaki and Ors.** (supra) and also referring to the view in **Pothuru Venkata Rama Raju v. Yandra Venkata Narasayya and Ors.** (supra), yet another learned Judge of this Court in **Harichandra Prasad v. Aturi Venkatanarayana** {2002(1) An.W.R. 397 (A.P.)} arrived at a conclusion that where it is an order having serious consequences, the same can be stayed in exercise of discretion and it being a discretionary order, unless, the same is illegal or impermissible, it needs no disturbance at the hands of the revisional Court. In view of the same, there cannot be any controversy whatsoever that in the light of the language of Order 41 Rule 5(1) of CPC, read with Order 21 Rule 32(1) of CPC, depending upon the facts and circumstances, stay of execution of a decree of perpetual injunction also can be granted. It is needless to say that when the learned Judge exercised

the discretion in a particular way, the revisional Court should be slow in disturbing the said order, unless any illegality or serious legal infirmities had been pointed out. In the present case, apart from the fact that a decree for perpetual injunction had been granted, yet another relief of mandatory injunction also had been granted, which is an additional factor.”

6. The discussion and reasons assigned by the trial Court would show that the defendants *prima facie* failed to prove that they are the owners of Ac.0.16 gts of land and has come to clear conclusion that the plaintiff is in possession and enjoyment of the suit schedule property. While considering the application to grant stay of execution of judgment and decree, the first appellate Court has not discussed as to whether the defendant is in possession and is entitled to maintain possession. Only respective contentions were recorded. Noting further contention that there are fair chances to succeed in the appeal and on the ground that the record from the lower Court is not yet received whereas the appeal is ripe for disposal, the appellate Court granted injunction.

7. Thus, there is no discussion by the first appellate Court as to whether the appellant made out a case for grant of injunction more so when a categorical finding was recorded by the trial Court that the defendants failed to establish their ownership and the plaintiff proved his possession and enjoyment. Thus, the decision relied upon by the defendants

do not come to their aid. No doubt, ordinarily revisional Court does not sit over the decisions of the lower Courts in exercising discretion to grant injunction orders, however, the High Court can go into the decision to find out whether order is supported by reasons on the crucial aspect of possession and if no reasons are assigned, this Court can interfere.

8. At this stage, learned counsel for the plaintiff fairly submits that the trial Court initially granted order of *status quo*.

9. The Civil Revision Petition is disposed of with direction to maintain *status quo*. The order of the appellate Court in I.A.No.1118 of 2017 is modified to that extent and parties are directed to maintain *status quo* with regard to suit schedule property till disposal of AS.No.143 of 2017. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(P.NAVEEN RAO, J)

2nd April 2018
RRB