

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 524 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioners/plaintiffs is directed against the order, dated 27.11.2017, of the learned Senior Civil Judge, Miryalguda, passed in I.A.No.475 of 2017 in I.A.No.315 of 2013 in O.S.No.109 of 2013.

2. I have heard the submissions of Sri P. Prabhakar Reddy, learned counsel, appearing for the petitioners/plaintiffs and of Ms. Kalla Tulasi Durgamba, learned counsel representing Sri Kowturu Pavan Kumar, learned counsel appearing for the respondent-defendant. I have perused material record.

3. From the material on record and the submissions made, the following facts are discernable:

The plaintiffs brought a suit against the defendant for declaration of title and perpetual injunction in respect of a vacant house site of an extent of 375 Square Yards in Survey No.26/A in Block No.5 of Anumula Village and Mandal, Nalgonda District, more fully described in the schedule appended to the plaint. The defendant is resisting the suit. The trial Court earlier granted an *ex parte* temporary injunction in favour of the plaintiffs and against the defendant restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the said plaint schedule vacant house site. The said *ex parte* injunction order was granted on 09.04.2013 in I.A.No.315 of 2013. When the trial in the suit was in progress, in the year 2017, the plaintiffs filed the

subject Interlocutory Application to grant police aid through the Station House Officer, Haliya Police Station, for implementation of the *ex parte* injunction orders aforesated. The said Interlocutory Application was resisted by the defendant by filing a counter. On merits and by the orders impugned in the revision, the trial Court dismissed the Interlocutory Application observing that *ex parte* injunction order was granted on 09.04.2013 in I.A.No.315 of 2013 and that after a lapse of more than three years, the said I.A was closed on 10.06.2016 (without hearing and disposing it of on merits) and that the trial of the suit is in progress and hence, police protection cannot be granted during the progress of the trial in the suit.

4. Aggrieved thereof, the plaintiffs are before this Court.

5. Learned counsel for the petitioners/plaintiffs contended as follows:

The trial Court granted an *ex parte* injunction order in favour of the plaintiffs, on 09.04.2013, and the said order is subsisting. When an injunction order is granted and the same is in force, the defendant is bound to abide by the said order and must act in obedience to the said order of the Court. However, the defendant, being an adamant person, started interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule site and started giving troubles to the second plaintiff taking advantage of the fact that she is an aged lady and the first plaintiff is a minor. On 22.06.2017, when the second plaintiff gathered construction material for construction of a house in the schedule vacant site, the defendant once again tried to occupy the same,

obstructed the proposed construction work and threatened the plaintiffs with dire consequences. Therefore, she immediately rushed to Haliya Police Station and attempted to lodge a complaint with the Station House Officer of the said Police Station. As no action was taken, she was constrained to file the Interlocutory Application for grant of police aid for implementation of the *ex parte* injunction orders granted in favour of the plaintiffs. The trial Court failed to take note of the fact that though the order is an *ex parte* order, the defendant is obliged to obey the said order as long as the said order is in force and is not vacated. Hence, the trial Court ought to have granted police aid instead of dismissing the application. On account of the dismissal of the application, there is a serious threat to the peaceful possession of the plaintiffs over the plaint schedule property. Hence, the order impugned is liable to be set aside.

5.1 Learned counsel for the respondent-defendant while supporting the order and decretal order of the trial Court submitted that the *ex parte* interim order was granted in the year 2013 and that the application seeking police aid was filed after the injunction application was closed on 10.06.2016, and that too during the progress of trial and when the suit is coming for cross-examination of PW1 in the year 2017 and, therefore, at this distance of time, no police aid can be granted more particularly when the application whereby the *ex parte* injunction order was granted was not disposed of on merits and was closed; and, therefore, the revision petition may be disposed of directing the trial Court to expeditiously dispose of the suit.

6. I have given earnest consideration to the facts and submissions.

7. The preliminary facts as well as relevant facts and the contentions of the parties are already stated supra. Admittedly, the suit was instituted in the year 2013 in respect of a vacant house site. At the inception, i.e., on 09.04.2013, an *ex parte* injunction was granted in favour of the plaintiffs and against the defendant. However, the trial Court has not disposed of the said application on its merit, within the time allowed under law. Conversely, the learned Senior Civil Judge by orders, dated 10.06.2016, closed the application without disposing of the same on its merit. Such a course adopted by the trial Court is impermissible under facts and in law, more particularly when the *ex parte* order of injunction granted is not limited in its operation for a definite period. Once an *ex parte* injunction is granted in an application for temporary injunction, the trial Court is obligated to hear both parties and pass orders on merits in that application either allowing the application and making the *ex parte* injunction order absolute or dismissing the same by vacating the *ex parte* injunction orders. The trial Court did not do so. Having allowed the said application to remain pending for a long time, the trial Court peculiarly closed the said application contrary to the settled legal position, practice and procedure.

8. Admittedly, when the trial is in progress and the suit is coming up for cross examination of PW1, the plaintiffs filed the subject Interlocutory Application for grant of police aid making certain allegations; and, the defendant filed a counter denying the

same. The property being vacant house site, as per the settled legal position, the principle of possession follows title would apply subject of course to any special facts and circumstances of the instant case, which may warrant consideration having regard to the pleadings and the evidence that may eventually be brought on record by the parties. If police aid is to be granted at this distance of time to implement an *ex parte* injunction order granted in the year 2013, that too, after closure of the application for temporary injunction and during the course of trial, in the considered view of this Court, it may lead to complex situations and would hinder the progress of the trial of the suit, which is part-heard. In fact, the trial Court having noted the very same facts stated above held that granting of police aid sought for by the plaintiffs is not justified and dismissed the application of the plaintiffs.

9. On the analysis of the facts & events, this Court is of the considered view that the revision petition can be disposed of with certain directions.

10. In the result, the Civil Revision Petition is allowed and the impugned order passed in I.A.No.475 of 2017 is set aside and the said IA is remitted to the trial Court for disposal afresh, if necessary, on its merit, with the following directions:

- (i) The trial Court shall proceed with the trial of the suit and dispose of the suit as expeditiously as possible and preferably within (40) days from the date of receipt of a copy of this order.
- (ii) In the event the trial gets prolonged and the disposal of the suit gets delayed for any valid and

justifiable reasons and in the event, the hearing and disposal of the application for grant of police aid, which is now remitted, becomes absolutely necessary, the trial Court shall then first reopen I.A.No.315 of 2013, that is, the application filed by the plaintiffs for grant of temporary injunction, which was closed without adjudication on merits, and hear both the aforesaid applications together and dispose them of on merits simultaneously, however, in accordance with the procedure established by law.

No order as to costs. Pending miscellaneous petitions, if any, also shall stand closed in the light of this final order.

Date: 27.02.2018
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M. SEETHARAMA MURTI, J

