THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.3144 of 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 17.04.2017 passed in C.M.A.No.27 of 2016 wherein and whereby the order dated 26.09.2016 in I.A.No.491 of 2016 in O.S.No.157 of 2016 on the file of the Senior Civil Judge, Sattenapally, dismissing the petition filed by the petitioners seeking interim injunction, was confirmed.

2. Heard the learned counsel appearing for both the parties.

3. The facts leading to filing of the present petition are briefly as follows:

The first petitioner got an extent of Ac.1.00 in Sy.No.194/1 of Ameenabad village, Guntur District under a gift deed. It is the case of the second petitioner that she got item No.2 of the suit schedule property of an extent of Ac.0.80 cents in Sy.No.194/1 under a gift deed. It is the case of the third petitioner that he purchased an extent of Ac.0.50 cents in Sy.No.194/1 of Ameenabad village, Guntur District under a registered sale deed. It is the further case of the petitioners that the revenue authorities issued pattadar pass books in their favour in the year 2013. Basing on the sale deed and gift deeds, the petitioners filed a suit for declaration to declare them as owners of the suit schedule property and consequential permanent injunction restraining the respondents from interfering with their possession over the suit schedule property. It is the case of the respondents that they purchased an extent of Ac.3.53 cents in Sy.No.194/1 of Ameenabad village, Guntur District, under different sale deeds. It is the further case of the respondents that the revenue authorities have issued a pattadar pass book in their favour in the year 2005.

4. Along with the suit, the petitioners filed I.A.No.491 of 2016 under Order 39 Rules 1 and 2 CPC seeking interim injunction. To substantiate the case before the trial Court on behalf of the petitioners, Ex.P1 to P26 were marked. To demolish the case of the petitioners, the respondents got marked Exs.R1 to R13. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the petitioners are not entitled to interim injunction and dismissed the petition. Feeling aggrieved by the orders dated 26.09.2016 in I.A.No.491 of 2016, the petitioners preferred C.M.A.No.27 of 2016 on the file of the Court of III Additional District Judge, Guntur. The first appellate Court after considering the material available on record afresh, arrived at a conclusion that the petitioners are not entitled to interim injunction and dismissed the appeal. Hence, the unsuccessful petitioners preferred the revision.

5. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

6. The record reveals that the donors of the petitioners 1 and 2 and the vendor of the third petitioner purchased a land in

Sy.No.492/2B of Ameenabad village under registered sale deeds Ex.P1, P10 and P13. As per Exs.R1, R5, R6, R7, R8 and R9 sale deeds, the respondents purchased an extent of Ac.3.53 cents in Sy.No.194/1 of Ameenabad village, Guntur District. It is not in dispute that in the sale deeds filed by the petitioners, the survey number is mentioned as 492/2B and not 194/1.

7. Learned counsel for the petitioners strenuously submitted that the Courts below failed to consider Ex.P6 certificate issued by Tahsildar stating that the Sy.No.492/2B is corresponding to Sy.No.194/1. There is no mention in Ex.P6 certificate when resurvey was conducted and the survey No.492/2B is changed into survey No.194/1. Whether survey No.194/1 is corresponding to survey No.492/2B or not has to be determined at the time of full fledged trial. While deciding the interlocutory applications, the Court has to restrain itself to express any opinion touching the merits of the main case. While deciding the revision, if this Court expresses any opinion with regard to the above said aspect, certainly it would cause prejudice to one of the parties to the proceedings. To prove *prima facie* possession, the petitioners mainly relied on pattadar pass books and title deed books Exs.P3, P4, P7, P8, P11 and Ex.P12. The donors of petitioners 1 and 2 purchased the property in the year 2009. The third petitioner purchased the property in the year 2009. It is not in dispute that no pattadar pass books were issued in favour of the petitioners up to 2013. On the other hand,

a perusal of the record reveals that pattadar pass books were issued in favour of the respondents in the year 2005.

8. The concerned Mandal Revenue Officer issued pattadar passbooks in favour of the petitioners in respect of an extent of Ac.1.80 cents, Ac.0.80 cents and Ac.0.50 cents in Sy.No.194/1 without cancelling the pattadar pass books issued in favour of the respondents. On coming to know about the issuance of pattadar pass books in favour of the petitioners by the Mandal Revenue Officer, the respondents filed an appeal before the Revenue Divisional Officer, Guntur. The Revenue Divisional Officer, Guntur, after affording a reasonable opportunity to both parties, passed orders on 20.02.2016 cancelling the pattadar pass books and title deed books issued in favour of the petitioners. A perusal of the orders of the Revenue Divisional Officer clearly reveals that the Mandal Revenue Officer, without cancelling the pattadar pass books issued in favour of the respondents, issued new pattadar pass books in favour of the petitioners. Feeling aggrieved by the orders passed by the Revenue Divisional Officer, the petitioners filed revision before the Joint Collector. The Joint Collector, Guntur after affording a reasonable opportunity to both parties, confirmed the orders passed by the Revenue Divisional Officer.

9. At the time of arguments, learned counsel for the petitioners submitted that the petitioners have preferred W.P.No.29135 of 2018 challenging the orders passed by the Joint Collector. The learned counsel in all fairness submitted that this Court has not suspended the orders passed by the

Joint Collector. The fact remains that the order passed by the Revenue Divisional Officer which was confirmed by the Joint Collector is in force as on today. Whether the order passed by the Joint Collector is in accordance with law or not will be decided in W.P.No.29135 of 2018. In view of the pendency of the writ petition, it is not fair on the part of this Court to express any opinion with regard to the orders passed by the revenue authorities. There is no clarity whether the suit schedule property is situated in Sy.No.492/2B or Sy.No.194/1. The fact remains that the respondents have purchased the property in Sy.No.194/1.

10. Establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioners is *sine-quo-non* for granting of ad interim injunction. In the sale deeds filed by the petitioners, the survey number is mentioned as 492/2B. A perusal of the plaint schedule clearly demonstrates that the petitioners filed the suit in respect of an extent of Ac.2.30 gts., in Sy.No.194/1 of Ameenabad village, Guntur District. It is not the case of the petitioners that their donors or the vendor have purchased the property in Sy.No.194/1. On the other hand, it is the case of the petitioners that their donors and the vendor purchased the land in Sy.No.492/2B. This aspect *prima facie* casts a cloud on the version put forth by the petitioners. The petitioners failed to prove *prima facie* case in their favour. Balance of convenience is also not in their favour. If an injunction is granted in favour of the petitioners, it may cause untold hardship to the respondents when compared to

the petitioners. The trial Court as well as the appellate Court considered various documents filed by both parties and arrived at a conclusion that the petitioners failed to prove the cardinal principles for granting of interim injunction. The courts below have assigned reasons much less valid reasons to its findings. If the findings recorded by the Courts below are not based on any material much less legally admissible material, certainly this Court can set aside such findings while exercising the jurisdiction under Article 227 of the Constitution of India. As observed earlier, the findings recorded by the Courts below are based on material available on record. I am fully endorsing with the findings recorded by the Courts below. This Court shall not lightly interfere with the concurrent finding of fact recorded by the courts below unless there is an error apparent on the face of the record. In the instant case, there is no error apparent on the face of the record. There is no illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. View from any angle, there are no merits in the revision petition and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:26.09.2018
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