

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.167 of 2018

JUDGMENT:

This Civil Miscellaneous Appeal, under Order 43 Rule 1 (r) CPC, is filed questioning the order in I.A.No.368 of 2016 in O.S.No.27 of 2016 passed by the VI Additional District and Sessions Judge, Markapur, Prakasam District, granting interim injunction restraining the appellant – respondent No.3 from interfering with the peaceful possession and enjoyment of respondent No.1 – plaintiff till the disposal of the suit.

For convenience, parties hereinafter will be referred as they were referred to in the order, in appeal.

It is the case of plaintiff that she purchased the plaintiff schedule properties through a registered sale deed dated 12.11.2012 – Ex.P.2 executed by Sri M.Srinivasa Reddy, General Power of Attorney of respondent Nos.1 and 2; since the date of purchase, she has been in possession and enjoyment thereof; her name was mutated in the revenue records and pattadar pass books and title deeds were issued in her favour; she dug three borewells and erected transformer and has been paying consumption charges.

While matter stood thus, plaintiff, through her husband, came to know that registered sale deed dated 04.07.2016 was obtained through process of Court of Senior Civil Judge, Darsi by respondent No.3 in respect of plaintiff

schedule property consequent upon the decree and judgment in O.S.No.38 of 2014 obtained order for delivery of possession in E.A.No.106 of 2006; respondent Nos.1 and 2 and respondent No.3 colluded together and managed to obtain sale deed through Court by playing fraud and misrepresentation; delivery effected in E.A.No.106 of 2016 dated 16.06.2016 is only a paper delivery and physical possession was not delivered actually; taking advantage of the order in E.A.No.106 of 2016, respondent No.3 is trying to interfere with the lawful possession and enjoyment of the property of plaintiff; plaintiff will sustain irreparable injury if no injunction is granted as *prima facie* case and balance of convenience is in her favour; and sought temporary injunction during the pendency of the suit.

Respondent No.3 filed counter *inter alia* contending that he entered into an agreement of sale dated 24.04.2002 for total sale consideration of Rs.3,30,400/- @ Rs.40,000/- per acre, and paid advance sale consideration; however, the vendors (respondent Nos.1 and 2) did not execute registered sale deed; he got issued legal notice dated 05.04.2013 demanding to receive balance sale consideration and execute registered sale deed; as respondent Nos.1 and 2 did not come forward, respondent No.3 filed O.S.No.32 of 2014 on the file of Senior Civil Judge, Darsi, for specific performance of agreement of sale, and obtained decree on 10.11.2014; later, respondent No.3 filed E.P.No.15 of 2015 and got registered

sale deed executed on 04.03.2016 through process of Court; possession was delivered on 23.06.2016 vide order in E.A.No.105 of 2016; since then, respondent No.3 is in possession and enjoyment of the plaint schedule property; and, therefore, he cannot be restrained from entering into the plaint schedule property and prayed for dismissal of the suit and petition filed under Order XXXIX Rules 1 and 2 CPC.

During enquiry, no oral evidence was produced but marked Exs.P.1 to P.11 on behalf of plaintiff. On behalf of respondent No.3, Exs.R.1 and R.2 were marked.

After hearing argument of both the counsel, the Trial Court passed the impugned order granting interim injunction in favour of plaintiff – respondent No.1 restraining respondent No.3 – appellant from interfering with the peaceful possession and enjoyment of plaintiff till the disposal of the main suit.

Aggrieved by the order, the present Civil Miscellaneous Appeal is filed.

At the stage of admission, respondent No.3 reiterated the grounds raised in the counter filed before the Trial Court and ground raised in appeal and contended that the Trial Court did not consider the documents produced by him in proper perspective; in fact, he applied for issuance of pattadar pass books and title deeds but the Tahsildar refused to issue pattadar pass books and title deeds; thereupon, he preferred a revision before the Joint Collector which is pending; apart from that, respondent No.3 - appellant was not aware of sale

of property in favour of plaintiff – respondent No.1; adangals produced by plaintiff are not genuine to conclude that she is in possession and enjoyment of the property; the Trial Court also did not consider the issue of pattadar pass books and title deeds in view of pendency of revision but, still, granted interim injunction exercising power under Order XXXIX Rules 1 and 2 CPC and committed error; respondent No.3 is in actual possession and enjoyment of the property in view of the delivery recorded by the Senior Civil Judge, Darsi in E.A.No.106 of 2016; the Trial Court did not consider this aspect in proper perspective; and requested to set aside the order of the Court below.

Considering the contention of counsel for appellant, the point for consideration is:

Whether respondent No.1 is entitled to claim interim injunction, and whether the order passed by the Trial Court, in I.A.No.368 of 2016 in O.S.No.27 of 2016, is liable to be varied or set aside?

POINT:

The material on record would show that respondent No.3 entered into agreement of sale with respondent Nos.1 and 2 to purchase the suit schedule property and, later, obtained registered sale deed, executed, through process of Court marked as Ex.R.2. While the learned counsel for respondent No.3 asserts that respondent No.3 alone is in possession and enjoyment of the property as on the date of

filing of the suit, the material on record discloses that respondent Nos.1 and 2 executed original registered General Power of Attorney dated 19.08.2010 marked as Ex.P.1; Ex.P.2 is the registered sale deed executed in favour of plaintiff in the year 2012; thereafter, her name was mutated and she continued to be in possession in view of Exs.P.3 to P.10; Ex.P.11 is the electricity consumption bills for the motor installed to the borewells dug in the plaint schedule property.

Though the petitioner filed suit in the year 2014, respondent Nos.1 and 2 executed original General Power of Attorney on 19.08.2010 marked as Ex.P.1; pursuant to authorization marked as Ex.P.1, sale deed dated 12.11.2012 – Ex.P.2 was executed in favour of plaintiff; thus, by the date of filing suit, plaintiff became the owner of the suit schedule property; despite execution of registered sale deed by General Power of Attorney holder of respondent Nos.1 and 2 in favour of plaintiff marked as Ex.P.2, plaintiff was not made as a party though she is the purchaser during subsistence of agreement of sale; when the title is vested on plaintiff, to divest the title, the alleged subsequent purchaser shall be impleaded as a party to the suit in view of Section 19 of the Specific Relief Act; obviously, except pleading ignorance of the transaction, she was not impleaded as a party to the suit for specific performance and obtained a decree simply against his vendors; therefore, the decree passed against defendant Nos.1 and 2 in O.S.No.32 of 2014 is not binding on plaintiff; apart

from that, plaintiff produced Exs.P.3 to P.10, copies of adangals, i.e. cultivation account, to establish that she is in possession and cultivating the property in her own right; thus, by the date of filing suit, plaintiff is in possession and enjoyment of the property as per the material available on record; the contention of defendant No.3 that he is in possession of the suit schedule property and possession was delivered as per Ex.R.2, delivery receipt, cannot be accepted as he did not substantiate his contention that he is in possession except producing Ex.R.2, delivery receipt, which is a question of fact to be decided at the end of trial but, at this stage, it is difficult to accept the contention; and, therefore, plaintiff *prima facie* established that she is in possession and enjoyment of the property and cultivating the land in her own right.

To grant interim injunction, three requirements are *sine qua non viz.*, *prima facie* case, balance of convenience and irreparable injury.

In the case on hand, dispute is with regard to possession as on the date of filing the suit and both the plaintiff and defendant No.3 are claiming possession. However, plaintiff produced Exs.P.3 to P.10, adangal copies, to establish that she is in possession of the property, whereas, based on Ex.R.2, respondent No.3 is claiming possession, but the possession of plaintiff is since 2012 based on Ex.P.3 to P.10 adangals, i.e. cultivation account

maintained in the usual course of business by the Village Revenue Officer.

Prima facie case means the Court must satisfy that there is a strong case to go for trial or an arguable case as held by this Court in **Yashoda Super Speciality Hosptials, Hyderabad v. Yashoda Medicare and Research Centre (P) Limited, New Delhi**¹. In the present case, there is an arguable case to go for trial. Therefore, the Trial Court rightly concluded that *prima facie* case is in favour of plaintiff.

The other requirement is balance of convenience which means inconvenience being caused to the defendant No.3 - appellant. If inconvenience is being caused to defendant No.3, the Court can deny interim injunction. But, in the present case on hand, balance of convenience is tilting towards plaintiff as she *prima facie* established that she is in possession by producing adangals, Exs.P.3 to P.10. Therefore, the Trial Court rightly found that balance of convenience is also in favour of plaintiff.

One of the major contention raised before this Court is that, as the name of respondent No.3 was not mutated, a revision is filed before the Joint Collector which is pending adjudication; and, therefore, pattadar pass books and title deeds could not be produced by him. Mere delivery of possession, vide Ex.R.2, is insufficient to hold that he is in

¹ 2011 (1) ALD 79

possession of the property since physical delivery itself is in dispute. Therefore, this contention is without any substance.

The third requirement is irreparable injury. Injury means an illegal act or omission violating one's right. As held in **Kishna Devi Vs. Vishnu Mitra**², plaintiff must establish that he would be put to irreparable injury in case no injunction is granted. If, for any reason, defendant No.3 is allowed to occupy the property, certainly, plaintiff, who is in possession since 2012 i.e. from the date of execution of sale deed - Ex.P.2, will lose her possession which may lead to breach of peace and, in such case, the Court can grant temporary injunction holding that plaintiff would sustain irreparable injury or loss. The Trial Court, having considered the material on record, found all the three requirements in favour of plaintiff and rightly granted interim injunction which cannot be interfered with by this Court while exercising power under Order 43 Rule 1(r) CPC.

The order passed by the Trial Court is confirmed holding the point in favour of plaintiff while finding no ground to interfere with the order under challenge in this appeal.

In the result, Civil Miscellaneous Appeal is dismissed at the stage of admission confirming the order in I.A.No.368 of 2016 in O.S.No.27 of 2016 passed by the VI Additional District and Sessions Judge, Markapur, Prakasam District.

² AIR 1982 RAJ 281

Miscellaneous petitions pending, if any, shall stand dismissed.

No costs.

M.SATYANARAYANA MURTHY,J

Date:28.02.2018

Note:CC one week

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