

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2711 of 2017

ORDER:

This civil revision petition is filed by the petitioner-defendant under Article 227 of the Constitution of India, assailing the order dated 04.4.2017 passed in C.M.A. No.5 of 2017 on the file of the IX Additional District Court, Wanaparthi, wherein and whereby the order dated 18.2.2017 passed in I.A.No.102 of 2014 in O.S.No.35 of 2014 on the file of the Court of Junior Civil Judge, Kollapur, granting interim injunction in favour of the petitioner-plaintiff, was confirmed.

2. Heard the learned counsel for both the parties.
3. The parties will be referred to as they were arrayed before the trial Court, to avoid confusion.
4. The petitioner filed O.S.No.35 of 2014 against the respondent seeking perpetual injunction in respect of an extent of Acs.2.11 guntas in survey No.485/E of Pulgarcharla Village, Panagal Mandal, Mahaboobnagar District (for short, suit schedule property). Along with the suit, the petitioner filed I.A.No.102 of 2014 under Order XXXIX Rules 1 and 2 of CPC seeking interim injunction. The respondent filed counter *inter alia* contending that the petitioner was not in possession of the suit schedule property as on the date of filing of the suit. The trial Court, after affording reasonable opportunity to both the parties, allowed the petition. Feeling aggrieved by the order dated 18.2.2017 in I.A.No.102 of 2014 in O.S.No.35 of 2014, the respondent preferred CMA No.5 of 2017 on the file of the IX Additional District Court, Wanaparthi.

The appellate Court, after re-appraising the material available on record, arrived at the conclusion that the petitioner is entitled to interim injunction. The unsuccessful respondent filed the present revision petition.

5. The contention of learned counsel for the respondent (revision petitioner herein) is two fold: (1) the trial Court ought not to have granted interim injunction in favour of the petitioner-plaintiff as she failed to prove her title over the suit schedule property; and (2) the Courts below failed to consider that the petitioner-plaintiff created Exs.P.1 and P.2 to obtain interim injunction. ***Per contra***, learned counsel for the petitioner (respondent herein) submitted that the trial Court rightly considered Exs.P.1 and P.2 and allowed the petition. He further submitted that Exs.B.5 and B.7 filed by the respondent-defendant supports the version of the petitioner-plaintiff. He further submitted that this Court shall not lightly interfere with the concurrent findings of fact recorded by the Courts below, while exercising the revisional jurisdiction under Article 227 of the Constitution of India.

6. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

7. It is not in dispute that the petitioner and respondent belong to the same family. It is the case of the petitioner that her husband succeeded to the suit schedule property. It is the further case of the petitioner that the respondent is interfering with the

suit schedule property. On the other hand, the case of the respondent is that he is the owner of an extent of Acs.5.11 guntas, which includes the suit schedule property.

8. Establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioner is *sine qua non* to grant interim injunction in favour of the petitioner. Besides that, the petitioner has to come to the Court with clean hands.

9. Let me consider the facts of the case on hand in the light of the above three cardinal principles. The petitioner filed the suit seeking perpetual injunction in respect of an extent of Acs.2.11 guntas in survey No.485/E of Pulgarcharla Village, Panagal Mandal, Mahaboobnagar District. A perusal of Exs.A.1 and A2 *prima facie* reveals that the petitioner is in possession of the suit schedule property. As per the recitals of Exs.B.5 and B.7, the petitioner is in possession and enjoyment of an extent of Acs.0.11 guntas in survey No.485/E. As per the averments made in the counter, there is a boundary dispute between the petitioner and the respondent. This itself *prima facie* indicates that the petitioner is having land by the side of the land of the respondent. To dislodge the case of the petitioner, the respondent mainly relied on Exs.B.1 to B.7–Revenue records. There is not much dispute between the parties with regard to Exs.B.1 and B.2. As per Ex.B.3, the respondent is having land admeasuring an extent of Acs.5.00 in survey No.485. As per Ex.B.4, the respondent is having land admeasuring an extent of Acs.5.00 in survey No.485/U. In Exs.B.6, survey number is shown as 485/U whereas in Ex.B.6, survey number is shown as 485/E. The name of the respondent is

not shown in Ex.B6. The respondent has filed the revenue records with different survey numbers. If Exs.B.3, B.4 and B.6 are taken into consideration, the respondent *prima facie* is not having any landed property in survey No.485/E, which is the suit schedule property. The documents filed by the respondent are no way helpful either to substantiate his stand or to demolish the case of the petitioner. As observed earlier, Exs.B.5 and B.7, which are the documents filed by the respondents, support the case of the petitioner.

10. The predominant contention of learned counsel for the petitioner is that the Courts below have not given specific finding that the petitioner is title-holder of the suit schedule property. It is a settled principle of law that while deciding the interlocutory applications, the Court shall not express any opinion touching the merits of the main case. It is needless to say that in a suit for perpetual injunction, the Court has to decide, whether the plaintiff has been in possession and enjoyment of the suit schedule property as on the date of filing of the suit. In a suit for injunction, the Court can incidentally decide the title of the suit schedule property. Deciding of the title of the parties to the suit is not a condition precedent for granting the injunction. In view of the settled principles of law, I am unable to accede to the contention of the learned counsel for the respondent.

11. It is needless to say that this Court shall not lightly interfere with the concurrent findings of fact recorded by the Courts below. However, this Court can set-aside the concurrent finding of fact recorded by the Courts below, if there is any error manifest on the

face of the record. In the instant case, the trial Court considered the documentary evidence adduced by both the parties and arrived at a conclusion that the petitioner has established the cardinal principles of law, for granting interim injunction in his favour in respect of the suit schedule property. The first appellate Court, without being influenced by the order passed by the trial Court, arrived at the conclusion that the petitioner satisfied the basic ingredients of Order XXXIX Rules 1 and 2 of CPC. The findings recorded by the Courts below are based on the documentary evidence. The Courts below have assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the Courts below.

12. Having regard to the facts and circumstances of the case, this Court is of considered view that there is no illegality, irregularity or impropriety in the orders passed by the Courts below, warranting interference of this Court, while exercising jurisdiction under Article 227 of the Constitution of India. The revision petition lacks merits and *bona fides*.

13. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 28.8.2018

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