

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4089 OF 2017

ORDER:

The present Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the order dated 03.07.2017 in C.M.A. No.26 of 2016 passed by the IX Additional District Judge, Chittoor, whereby the order dated 22.11.2016 in I.A.No.11 of 2016 in O.S. No.8 of 2016 passed by the I Additional Junior Civil Judge, Chittoor, was set aside.

The petitioner filed petition under Order XXXIX Rules 1 and 2 C.P.C. claiming that he is absolute owner of the schedule property to an extent of Ac.0.49 cents in Survey No.255/2 and Ac.0.21 cents in Survey No.254, which is described in ABCDE in the rough sketch annexed to the plaint. Respondents 1 and 2 are wife and husband. The petitioner purchased the scheduled land under registered sale deed on 18.05.2011 from one Lokanadha Reddy S/o Katari Nagi Reddy since then he is in possession and enjoyment of the property. Originally, Daka Appi Reddy S/o Muni Reddy and Katari Munireddy were joint pattadars of lands in Survey No.255/2 and Survey No.254. Out of Ac.2.08 cents, Daka family and Katari family each had Ac.1.04 cents in Survey No.255/2 and out of Ac.0.85 cents Daka family had Ac.0.43 cents and Katari family had Ac.0.21 cents in Survey No.254. The petitioner purchased Ac.0.49 cents in Survey No.255/2 and Ac.0.21 cents in Survey No.254 as held by Katari Family with specific boundaries. It is also contended that the respondents without any lawful right and title to the property trying to interfere with the possession of the property and unless the respondents are restrained from interfering with the property, the petitioner cannot protect his lawful possession and sought for interim injunction.

Whereas, respondent filed counter denying material allegations claiming possession over the suit schedule property along with adjacent property. He also contended that the petitioner is not entitled to claim any discretionary relief of interim injunction, when he is out of possession.

During enquiry before the Court below, Exs.P.1 to P.9 were marked on behalf of the petitioner, Exs.R.1 to R.6 were marked on behalf of the respondents and Ex.C.1 to C.3.

Upon hearing both counsel, the Court below find that the petitioner is in possession of the property and granted interim injunction from interfering with the peaceful possession of the property.

Aggrieved by the said order, the respondents preferred C.M.A.No.26 of 2016 and upon hearing both counsel, the appellate Court reversed the order passed by the Court below.

Aggrieved by the impugned order, the present revision petition is filed raising various grounds mainly contending about possession and non consideration of the material filed before the Appellate Court.

None appeared for the respondents, though notice was served and proof of service is filed.

A bare look at the impugned order, it is bereft of any discussion of mandatory requirements to grant interim injunction, they are *prima facie* case, balance of convenience and irreparable loss, unless the Court below recorded its finding that the petitioner has *prima facie* case, balance of convenience in his favour and that, the petitioner would sustain irreparable injury, no interim injunction shall be granted. In the absence of recording finding about three requirements, the order of the Court below cannot be sustained. More curiously, the appellate Court also did not advert to the requirements to grant interim injunction and committed an error in

reversing the order of the Court below. Therefore, the order passed by the Court below and the appellate Court are bereft of any finding as to the *prima facie* case, balance of convenience and irreparable loss.

This Court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate Courts or the Tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate Court or Tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- a) When the inferior court **assumes** jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;

- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised *suo motu*. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. This Court did not exercise its discretionary power within the limits under Order XXXIX Rules 1 and 2 C.P.C., the Court below did not record findings as to the three requirements stated above. Therefore, I find that it is a fit case to set

¹ (34)2005 (3) ALT (CrI.) 125 (SC)

aside the orders passed by the Courts below.

In the result, the civil revision petition is allowed setting aside the order dated 03.07.2017 in C.M.A. No.26 of 2016 passed by the IX Additional District Judge, Chittoor and order dated 22.11.2016 in I.A.No.11 of 2016 in O.S. No.8 of 2016 passed by the I Additional Junior Civil Judge, Chittoor, remanding I.A.No.11 of 2016 in O.S.No.8 of 2016 to I Additional Junior Civil Judge, Chittoor for fresh disposal in accordance with law, within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present Civil Revision Petition stand closed.

October 30, 2018
Note : c.c. by 05.11.2018
b/o
kvrn

M. SATYANARAYANA MURTHY, J

