

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 1430 OF 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the petitioner-plaintiff challenging decree and judgment dated 03-08-2015 passed in C.M.A.No. 31 of 2014 on the file of the Court of Principal District Judge, Medak at Sangareddy (for short, 'the Court below'), whereby the Court below dismissed the abovementioned C.M.A.

2. The petitioner filed suit O.S.No. 76 of 2014 on the file of the Court of Principal Junior Civil Judge, Sangareddy (for short, 'the trial Court') against the respondents for permanent injunction restraining the respondents and their men from interfering with his peaceful possession and enjoyment over suit schedule agricultural land. In the said suit, the petitioner filed I.A.No. 436 of 2014 for temporary injunction pending the suit. The trial Court by order dated 07-10-2014 dismissed the above I.A. holding that the petitioner failed to establish that he is in possession and enjoyment of the suit schedule property, as on the date of filing the suit and also failed to establish the three requirements, namely; (1) *prima facie* case, (2) balance of convenience and (3) irreparable injury which are *sine qua non* for grant of temporary injunction during pendency of the suit. Aggrieved by the same, the petitioner preferred the above C.M.A. By the impugned decree and judgment, the Court below confirmed the order of the trial Court.

3. At the hearing, learned counsel for the petitioner has contended that a preliminary decree was passed, commissioner was appointed for division of the property and still the commissioner did not execute warrant but the suit schedule property is in possession and enjoyment of the petitioner and therefore requested to grant temporary injunction since both the Courts below did not

consider the documents marked as Exs.P1 to P22 and committed an error in dismissing the petition.

4. Whereas learned counsel for the respondents has opposed the petition on the ground urged before the trial Court.

5. It is an undisputed fact that the petitioner earlier filed suit O.S.No. 3 of 2000 on the file of the Court of VIII Additional Senior Civil Judge (FTC), City Civil Court, Hyderabad, for partition and obtained a compromise decree dated 16-08-2010, whereby the petitioner is entitled to 18% share in the entire property of Ac. 22.19 guntas in survey Nos. 19 and 21 of Machepally Village, Kondapur Mandal, Medak District, but no final decree is passed till date. Unless final decree is passed, question of allotment of property by metes and bounds to the petitioner and delivery of possession would not arise. When the petitioner himself contended in O.S.No. 3 of 2000 that he and other members of the family are in joint possession and enjoyment of the property, he now cannot claim exclusive possession and enjoyment of the property until the same is divided by metes and bounds, allotted his due share and delivered to him in final decree proceedings. Therefore, the contention of the petitioner that he is in exclusive possession and enjoyment of the property cannot be accepted. Apart from that, the documentary evidence produced before the trial Court would show that the ancestors of the petitioner are in possession of the property in different survey numbers. When the petitioner is claiming that he is in exclusive possession and enjoyment of the property and the respondents are making attempt to interfere with his possession and enjoyment, it is for the petitioner to prove that he is in exclusive possession and enjoyment of the property as on date. This plea is contrary to the plea raised in O.S.No. 3 of 2000. Therefore, basing on the inconsistent pleas raised in O.S.No. 3 of 2000 and in the present suit, exclusive

possession and enjoyment of the property by the petitioner cannot be accepted since they are mutually inconsistent with one another. Therefore, on the basis of alleged possession, the petitioner is disentitled to claim temporary injunction during pendency of the suit.

6. The main requirements for grant of *interim* injunction are that the petitioner has to establish that he is in possession and enjoyment of the property; that he will sustain irreparable loss in the event of negating the relief of *interim* injunction and that the balance of convenience is in his favour. When the petitioner failed to establish that he is in exclusive possession and enjoyment of the property by producing any material, the concurrent fact findings recorded by both the Courts below cannot be disturbed in ordinary course of events since the relief of injunction is only discretionary in nature. Both the Courts below after consideration of each and every document rightly concluded that the petitioner is not in possession of the property to claim temporary injunction. Moreover, the relief of injunction is discretionary which cannot be interfered with by this Court in normal course of events, when both the Courts below recorded concurrent fact findings regarding possession, while exercising power under Article 227 of the Constitution of India. In view of the limited jurisdiction of this Court, I find no ground to interfere with the concurrent fact findings recorded by both the Courts below.

7. The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

Date: 15-11-2018.
JSK

M.SATYANARAYANA MURTHY, J.