

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 1945 of 2018

ORDER:

This civil revision petition is arising out of the order dated 06.03.2018 passed by the Sub-Divisional Magistrate & Special Assistant Agent (Mobile Court), at Bhadrachalam, in I.A.No.72 of 2017 in O.S.No.63 of 2017, dismissing the petition with an observation that respondents-defendants are entitled to retain their possession towards their share of schedule property. The revision petitioner is the plaintiff, and the respondents 1 and 2 are the defendants in O.S.No.63 of 2017.

Heard the arguments of learned counsel for the petitioner, and respondents.

Learned counsel for the petitioner submits that the learned Presiding Officer, except re-producing the pleadings of both the parties and mentioning the documents, has not gone into the merits of the petition and passed an order arbitrarily and, therefore, sought for setting aside the order as it is not on merits.

Learned counsel for the respondents submits that the trial Court has passed an order on merits. The defendants are entitled to retain their possession over the schedule property, as the petitioner and respondents are co-sharers of the property, and they are jointly managing the lodging business under the name and style of Sri Raghuram Residency. Therefore, the orders passed by the trial

Court may not require interference. The petitioner and respondents are co-sharers of the property.

However, a perusal of the order passed by the trial Court reveals that the trial Court has gone into merits of main suit and reached final conclusion before conducting the trial. In the last paragraph of the order, the trial Court held that there was no prima facie case and balance of convenience in favour of the petitioner-plaintiff. In fact, it is the petitioner who has come to the Court seeking the relief of injunction. The Court, on one hand refused to grant injunction without giving any reasons, and on the other hand, directed the respondents to retain possession over the schedule property. There is nothing left in the suit to be decided.

The brief facts of the case are that the revision petitioner is the plaintiff, and the respondents are defendants in the suit O.S.No.63 of 2017.

The petitioner filed an application, I.A.No.72 of 2017, under Rule 42(a) & (c) of Agency Rules, 1924, for temporary injunction, restraining the respondents/defendants from interfering with her peaceful possession and enjoyment of the petition schedule property.

In the affidavit filed in support of the said I.A., she stated that she was the owner and possessor of R.C.C. building, the petition schedule property. In the said building, she was running a lodge under the name and style

of Sri Raghuram Residency. She claims that she acquired the schedule property through a registered Will dated 06.06.2011 executed by one Laxmi Tayaramma, and since then she has been in possession and enjoyment of the schedule property. She has approached the Gram Panchayat, Bhadrachalam, for mutation of her name in the Revenue records and her name was mutated in the revenue records, and she paid house tax till 2016-17. Respondent No.1 is her son in law, and respondent No.2 is the son of respondent No.1. Taking advantage of her relationship with them, the respondents are interfering with her peaceful possession over the schedule property. On 27.02.2017, the respondents, with the help of antisocial elements, tried to dispossess her from the schedule property. Therefore, she filed interlocutory application for grant of temporary injunction to restrain the respondents from interfering with her peaceful possession and enjoyment.

The respondents have filed a common counter affidavit denying the right and title of the petitioner over the petition schedule property. According to the respondents, the schedule property originally belongs to one Sri Rangam Laxmi Tayaramma, and she has executed a registered Will dated 24.02.1992 in favour of one S. Vijay Kumar who is her son. After she executed the Will in favour of her son, he sold away the schedule property to one B. Parasu Ram Reddy through an unregistered sale deed dated 16.03.2001 for Rs. 1,50,000/-. After purchase of the property, the said P. Parasu Ram Reddy came into

possession of property and again he sold the property to Smt. Srirangam Nirmala, through an unregistered sale deed dated 06.02.2003 for Rs.1,60,000/-. Again Laxmi Tayaramma executed an unregistered Will dated 13.02.2003 in favour of her son Srirangam Krishna Kumar. On 10.02.2011, Smt. Srirangam Laxmi Tayaramma and her son Srirangam Krishna Kumar, and her daughter Srirangam Nirmala sold the schedule property to Smt. Panja Rajeswari for Rs.16,99,999/-. Smt. Panja Rajeswari, the petitioner herein and her husband and her son sold away the half share of the property for Rs.8,50,000/- under an unregistered sale deed dated 21.01.2012 to the 2nd respondent. The 2nd respondent became the owner of half of the schedule property.

The first respondent has purchased the property through an agreement of sale dated 21.01.2012 and paid a sum of Rs.8,50,000/- towards her share for construction of the lodge, as such the respondents are the joint owners of the suit schedule property. The respondents have denied that on 27.02.2017 they tried to dispossess the petitioner from the schedule property. The petitioner conveniently produced the documents before the authorities and cheated the Court though the schedule property purchased for Rs.16,99,999/- by the petitioner on 10.02.2011 she sold half portion to 2nd respondent for Rs.8,50,000/- on 21.01.2012 and suppressing all the sales, she filed the suit. The respondents also denied the execution of Will deed by the petitioner contending that there are suspicious circumstances in execution of the Will deed.

They have also denied the mutation of the schedule property by cheating the Gram Panchayat authorities. Therefore, it is stated that the petitioner has no prima facie case and balance of convenience in her favour and, therefore, sought for dismissal of the petition.

The learned Presiding Officer has exceeded the scope of the petition filed for grant of temporary injunction. The impugned order dated 06.03.2018 clearly reveals that without considering the prima facie case, balance of convenience and irreparable loss, the Presiding Officer has passed an order by merely re-producing the pleadings of the parties in the documents and with a small discussion touching the merits of the suit which is not expected in an interlocutory application. The Court ought to have seen whether there is prima facie case, balance of convenience and irreparable loss for the petitioner for grant of injunction. Without there being a trial and examining witnesses and discussing the documents in the light of the evidence and on hearing both the parties, the Court below came to the conclusion that the registered Will dated 06.06.2011 is not a valid Will and the petitioner will not get any rights through the Will. It is also the observation of the Court below that the petitioner produced a Will dated 06.06.2011 before the Gram Panchayat authorities, she produced a sale deed dated 10.02.2011 for Rs.3,50,000/- which are inconsistent with her pleadings. It is opined that the petitioner cannot claim the property through two documents. The discussion of the Court below clearly reveals that the merits of the

suit have been decided in the I.A., instead of considering the prima facie case, balance of convenience and irreparable loss. Therefore, the orders passed by the Court below are liable to be set aside.

IN THE RESULT, the impugned order dated 06.03.2018 passed in I.A.No.72 of 2017 in O.S.No.63 of 2017 is set aside, and the matter is remitted back to the trial Court for fresh disposal according to law, without going into the merits of the suit, by considering prima facie case, balance of convenience and irreparable loss, within one month from the date of receipt of a copy of this order. No costs. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J

20th July, 2018
KSM

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