

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.769 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 11.11.2013, made in CMA No.11 of 2012, on the file of the Senior Civil Judge, Huzurabad. The said CMA No.11 of 2012 was filed questioning the order in I.A.No.520 of 2012 in O.S.No.197 of 2012, dated 22.11.2012, passed by the Principal Junior Civil Judge, Huzurabad.

The suit O.S.No.197 of 2012 is filed for injunction restraining the defendants therein from interfering with the plaintiffs' possession and enjoyment. I.A.No.520 of 2012 was filed for temporary injunction and an order, dated 22.12.2012, was passed on merits after hearing both the learned counsel. Questioning the same, CMA No.11 of 2012 was filed. This is also heard on merits and the same was dismissed confirming the order of the lower court. Questioning the said order, the present civil revision petition is filed.

This court has heard Sri T.Ramulu, learned counsel for the revision petitioners, and Sri K.Udayasri, learned counsel, appearing for the respondents.

The contention of the learned counsel for the petitioners is that in a suit for injunction, possession as on the date of the suit is essential factor. The learned counsel argues that the respondents herein, who are the plaintiffs in the suit, did not file any document showing that they were in possession as on the date of the suit. According to the learned counsel, as on the date of the suit, the defendants/revision petitioners are in possession of the properties. As far as the pattadar passbook Ex.R6 is

concerned, learned counsel for the petitioners/defendants contended that there is presumption under Section 6 of the A.P.Rights in Land Pattedar Passbooks Act (for short "ROR Act). He contends that although the entries in the record of rights register enjoy a presumption in law that the entries are true unless the contrary is proved. He further contended that until and unless the said entries are set aside in a revision etc., they continue to hold the field. Therefore, the learned counsel contends that the impugned order and the order passed by the first court are wrong. He prays that the CMA must be allowed.

In response thereto, the learned counsel for the respondents submits that the orders passed by the first court in I.A.No.520 of 2012 and the order passed by the first appellate court in CMA No.11 of 2012 are reasoned orders, passed after hearing both the learned counsel and after marking of the documents. The learned counsel points out that in original court, Exs.P1 to P17 were marked on behalf of the respondents/plaintiffs and Exs.R1 to R6 were marked on behalf of the petitioners/defendants. Therefore, the learned counsel submits that on a consideration of the available documentary evidence, both the courts below came to the conclusion that the plaintiffs are in possession of the property. He submits that the same finding was confirmed in CMA No.11 of 2012 also. He further submits that possession as on the date of the suit can be inferred from the documents that are filed and that it is not necessary that as on the exact date of filing of the suit, there should be an entry showing the name of the plaintiffs. It is also submitted that both the lower courts considered the documents that are filed and ultimately came to the conclusion that the documents filed by the petitioners/defendants are dubious and there are clear discrepancies in

the documents. Therefore, according to the learned counsel, there is virtually no infirmity warranting interference by this court.

The point for consideration is whether the first appellate court in CMA No.11 of 2012 exercised its jurisdiction wrongly and whether this court should interfere with it.

This court, after hearing the learned counsel, notices that in the order passed in IA.No.520 of 2012, dated 22.11.2012, the trial court discussed the documentary evidence that was introduced by both the parties. The court came to the conclusion that the documents filed by the defendants are not very much reliable. The court also noticed the discrepancies in the entries. Exs.R1 to R4 were kept aside by the first court and Ex.R5, which is a computerized pahani was considered. This pahani was obtained subsequent to the filing of the suit and hence it was not relied upon.

The trial court after perusing the documents and hearing the submissions of the defendants/petitioners herein noticed that although the defendants claim title and possession from year 1985 under a simple sale deed, no document is filed to show the proof of their possession from 1985 onwards. In addition, the trial court also noticed that Ex.R1-13B certificate shows that the property was purchased by respondent No.1/defendant No.1, whereas as per the contention that it was purchased by the father of respondent No.1/defendant No.1. The pahanies filed by the defendants are subsequent to the proceedings of 13-B and 13-C. The first court also noticed that Ex.R3 pahani filed by the defendants is for the year 2007-08 and Ex.P12 is the pahani for the very same year filed by the plaintiffs. Ex.R3 has been issued by the V.R.O, whereas Ex.P12 was obtained from the M.R.O Office. The first court

noticed the entries in pahanies in Ex.P12 and Ex.R3 are different. Therefore, the first court came to the conclusion that the plaintiffs made out the case.

Similarly, during course of the hearing in the appeal also, the first appellate court considered all the documents that are filed. The first appellate court came to the conclusion that the documents filed by the defendants, the present revision petitioners, are not in consonance with the pleadings. The first appellate court also noticed that there is no proof of possession of the defendants from the year 1985 onwards. The first appellate court came to the conclusion that Exs.R1 to R6 are dubious and that no relief can be granted on the basis of these documents.

While it is true that there is a presumption in favour of entries in pattadar passbooks as per ROR Act, still the fact remains that concurrently two courts came to the conclusion that the documents filed by the defendants/revision petitioners herein are dubious in nature. The possession of the plaintiffs, who are respondents herein, has been exhibited from 1985-86 onwards, whereas the defendants' possession is exhibited from the year 2007-08 to 2011-12. The contention that possession as on the date of the suit is to be proved cannot be stretched to the extent that as on the exact date of filing of the suit, there should be a revenue record.

The respondents/plaintiffs have been enjoying the injunction on merits from November 2012 onwards. The injunction was confirmed on merits in the first appellate court also. The inherent correctness, veracity of the documents have to be finally decided during course of the trial of the suit. The *prima facie* findings are in favour of the respondents. Therefore, at this stage, this court does not find any reason to interfere

with the concurrent findings of the fact by both the courts below. This court does not find any reason to set aside the order passed by the first appellate court in CMA No.11 of 2012, confirming the order passed by the trial court in I.A.No.520 of 2012 in O.S.No.197 of 2012.

In view of the above, the civil revision petition is dismissed. In the circumstances, no costs.

The trial court is directed to proceed with the trial of the suit and dispose of the same without in any way being influenced by what is mentioned in this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 03.12.2018
Dsr

D.V.S.S.SOMAYAJULU,J

