

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.5027 and 5046 OF 2017

COMMON ORDER:

The Civil Revision Petition No.5027 of 2017 is filed under Article 227 of Constitution of India questioning the legality and propriety of the order dated 18.08.2017 passed in I.A.No.147 of 2017 in O.S.No.160 of 2017 by the Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam granting temporary injunction in favour of the respondent herein restraining the petitioners herein in a petition filed under Rule 42 (a) and (c) of A.P.Agency Rules, 1924 and under Section 151 of Code of Civil Procedure (for short "C.P.C.").

The Civil Revision Petition No.5046 of 2017 is filed under Article 227 of Constitution of India questioning the legality and propriety of the order dated 18.08.2017 passed in I.A.No.148 of 2017 in O.S.No.161 of 2017 by the Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam granting temporary injunction in favour of the respondent herein restraining the petitioners herein in a petition filed under Rule 42 (a) and (c) of A.P.Agency Rules, 1924 and under Section 151 of Code of Civil Procedure (for short "C.P.C.").

The allegations in both the revisions and the impugned orders passed by the trial Court are almost identical, hence it is expedient to decide both the revisions by common order.

For convenience sake, I would like to advert to the facts as narrated in C.R.P.No.5027 of 2017.

C.R.P.No.5027 of 2017:

The respondent herein, who is the plaintiff, filed suit for perpetual injunction asserting that she is the owner of the subject property and she is in possession and enjoyment of the property having obtained pattadar passbooks and title deeds in her favour, and that the name of the plaintiff is also mutated in the revenue records concerned including pahanies from Fasli 1420 to Fasli 1427 i.e. from the year 2009 – 2010 to 2016 – 2017. The respondent/plaintiff filed petition under Rule 42 (a) and (c) of A.P.Agency Rules 1924 for grant of interim injunction on the sole ground that unless the petitioners/defendants are restrained from interfering with her possession, it is difficult to protect her possession and sought for interim injunction during pendency of suit.

The petitioners herein are the respondents/defendants before the Court below. The petitioners/defendants filed counter contending that they are in possession and enjoyment of the property, having purchased the property from Sabaka Pentaiah on 08.05.1962 and continuing in possession and enjoyment of the property, thereby the respondent/plaintiff is not entitled to claim interim injunction during pendency of the suit.

During enquiry, no oral or documentary evidence is adduced by either side. Upon hearing arguments of both sides, the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam considered the documents produced before the Court and passed the impugned orders granting temporary injunction restraining the petitioners/defendants from interfering with the possession and enjoyment of the plaintiff.

Against the order passed by the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, the present revision is filed mainly on the ground that the petitioners/defendants established that they are in possession and enjoyment of the subject property *prima facie* by producing Adangals for the years 2016-17, 2017-18, but they were not considered and no finding was recorded by the Court below, however based on the documents produced by the respondent/plaintiff i.e. 1-B extract, pahanies from Fasli 1420 to Fasli 1427 corresponding agricultural years 2009 – 2010 to 2016 - 2017 granted temporary injunction while observing that the defendants purchased the petition schedule property from Sabaka Pentaiah, but the same is not valid since the said Sabaka Pentaiah is non-tribal. The Court below further observed that the documents filed by the respondent/plaintiff shows that the plaintiff is the absolute owner and pattedar of the property having valid possession over the petition schedule property.

During hearing, Sri Srinivas Rao Bodduluri, learned counsel for the petitioners contended that non-consideration of the documents produced before the Court and failure to record finding about the possession based on the Adangal for the years 2016-2017 and 2017-2018 produced before the Court is fatal and the order of the Court below cannot be sustained since the Court below did not apply its mind to the facts of the case and prayed to set aside the same.

Learned counsel for the respondent/plaintiff argued totally in support of the order passed by the Court below while contending that the petitioners herein had no title and the documents produced before the Court would not disclose actual possession

over the property and title to the property and also drawn the attention of this Court to the order of the Settlement Officer, Venkatapuram, Bhadrachalam dated 24.03.1982 in Case No.7522, where the patta was denied in favour of the petitioners since their vendor Sabaka Pentaiah was non-tribal as on the date of transaction, therefore, refused to grant Patta in their favour and on the strength of these documents, the trial Court rightly passed the impugned order and prayed to dismiss the revision.

It is a case, where both parties asserting that they are in possession and enjoyment of the property. Respondent herein based her claim on extract of 1-B, pattadar pass book, on line pahanies from Fasli 1420 to Fasli 1427 corresponding agricultural years 2009-2010 to 2016-2017 to establish *prima case* in her favour. Petitioners herein also relied on pahanies for the years 2016-2017 and 2017-2018 i.e. Fasli 1426 and 1427, in column No.12, the name of the respondent herein was mentioned as account holder/pattadar while in Column No.13, the name of person in possession was mentioned as Setti Narsimham (late) s/o.Late Lakshmaiah, Setti Ramana, w/o Sankara Rao (late), Setti Venkateswarlu, s/o Narasimham, the petitioners herein.

When both parties produced adangals for the year 2016-2017 with different entries as to the enjoyment of the property in coloumn No.13, the Court below is expected to decide which of the document disclosed actual physical/effective possession by calling the documents available with revenue department and find out who is in actual/effective possession as per the entries in the books, in fact the Court below did not even consider the documents produced by the petitioners herein and passed the

impugned order totally relying on the documents produced by the respondent herein as to the title and possession, though the entries in the Adangals (account No.3 of village) are conflicting with regard to possession and enjoyment of the property as on the date of filing of suit. Moreover, the Court below did not record any finding with regard to the documents produced by the petitioners herein i.e. adangals for Fasli Nos.1426 and 1427. Therefore, failure to consider and record finding on the documents relied on by the petitioners herein by accepting the case of the respondent is an error committed by the Court below.

While disposing the application for grant of interim injunction, the Court is expected to mark documents relied on by both parties as exhibits, but for the reasons best known to him, the Magistrate concerned did not mark any documents.

It is an undisputed fact that Civil Rules of Practice has no application to the Courts in agency areas. However, by practice, the documents have to be marked either in interlocutory order or in the main suit. In an identical issue in “**Amina Ayesha v Model Constructions, rep. by its Managing Partner**¹”, referred supra, while deciding a petition under Section 9 of Arbitration and Conciliation Act, 1996, this Court held that when the documents are not marked as exhibits, the order was liable to be set aside and accordingly set aside and remanded the matter to the Court below and the same principle is reiterated in the later judgment of the Division Bench of this Court reported in “**Mahaveer Infoway Ltd.,**

¹ 2014(3) ALT 345 (D.B.)

***Hyderabad and another V. Tech Minfy Info Solutions LLP,
Hyderabad².***

In view of the law declared by the two Division Benches of this Court and by following the practice, being followed in the civil suits by the civil Court, the order under challenge is liable to be set aside as it is contrary to the practice and procedure.

Therefore, keeping in view the law declared in the judgments referred supra, I deem it appropriate to remand the I.A.No.147 of 2017 in O.S.No.160 of 2017 to Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam with a direction to mark the documents relied upon by both the parties, consider those documents and pass appropriate order in accordance with law, within two (2) months from the date of receipt of a copy of this order.

In the result, the revision petition is allowed setting aside the impugned order and the matter is remitted back to the Court below with a direction to mark the documents relied upon by both parties, consider those documents and pass appropriate order in accordance with law, within two (2) months from the date of receipt of a copy of this order. No costs. Both parties are directed to maintain *status quo* as on today till the disposal of I.A.No.147 of 2017 in O.S.No.160 of 2017 by the Court below.

C.R.P.No.5046 of 2017:

In view of the detailed order passed in C.R.P.No.5027 of 2017, this revision is also allowed setting aside the impugned order and the matter is remitted back to the Court below with a direction to mark the documents relied upon by both parties, consider those

² 2017(5) ALD 351(D.B)

documents and pass appropriate order in accordance with law, within two (2) months from the date of receipt of a copy of this order. No costs. Both parties are directed to maintain *status quo* as on today till the disposal of I.A.No.148 of 2017 in O.S.No.161 of 2017 by the Court below.

The miscellaneous petitions pending in both the revisions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.02.2018
Ksp

