

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.13859 of 2018

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that the Hon’ble Court may be pleased to issue an order, writ or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the 4th respondent in interfering in civil disputes and issuing order dated 27-03-2018 in M.C.No.3 of 2017 directing the petitioner and his relatives to handover the possession of his land to the respondent Nos. 8 to 14, for being illegal, arbitrary, without jurisdiction, without authority of law and unconstitutional, and consequently direct the respondent Nos. 4 to 7 not to interfere in civil disputes area the subject land of the petitioner and pass such other order or orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. I have heard the submissions of Sri *Srinivas Rao Bodduluri*, learned counsel appearing for the petitioner, and of the learned Government Pleader for Revenue (A.P.), appearing for the respondents 1 to 3 & 7, and of the learned Government Pleader for Home (A.P.), appearing for the respondents 4 to 6, and of Sri *Mangina Sri Rama Rao*, learned counsel appearing for the unofficial respondents. I have perused the material record.

3. The facts discernable are as follows: The 9th respondent herein filed O.S.No.237 of 2016, on the file of the I Additional Junior Civil Court, Bhimavaram, in respect of Ac. 1.55 cents of Zyrayati Agricultural land, presently Fish Tank, in R.S.No.51C/H1 in Losari Gutlapadu Revenue Village (Block No.1), Kothapusalmuru Gram Panchayat Area, Bhimavaram Mandal, West Godavari District, morefully described in the schedule annexed to the plaint in the

said suit. In I.A.No.351 of 2016 in O.S.No.237 of 2016, the civil Court, by orders, dated 20.09.2017, granted a temporary injunction order in favour of the said 9th respondent herein restraining the respondents therein including the petitioner, who is the 5th respondent therein, from interfering with the possession of the 9th respondent herein over the afore-stated property. While so, proceedings in M.C.No.03/2017 were initiated before the Sub Divisional Magistrate, Narsapur, on the complaint of Sub-Inspector of Police, Bhimavaram Rural Police Station, by showing the petitioner herein as one of the parties to the A-Party and the 9th respondent as one of the parties to the B-Party. The Sub Divisional Magistrate, by order, dated 02.11.2017, ordered the Police Officer to maintain law and order by binding down both the parties for six (06) months and further requested to implement the injunction order given by the civil Court to avoid contempt proceedings. Thereafter, the impugned proceeding, dated 27.03.2018, was issued by the Sub Divisional Magistrate and Sub Collector, Narsapur, *inter alia* ordering as follows:

- "1) As report by the Sub-Inspector of Police, Bhimavaram, Rural of Law and Order situation the parties were summoned to Sub-Collector Office, Narsapur, under the inquire proceedings of Sec. 122 on 20.03.2018.**
- 2) Further discussion happened and it was discussed to handover the possession of land to Party B as per the Civil Court-Injunction Order and also to maintain Law and Order.**
- 3) Tahsildar, Bhimavaram and Sub-Inspector of Police, Bhimavaram Rural are instructed to do the same and follow this Court issued Order under Section 117 Cr.P.C., and as well as of the Court of the I Addl. Junior Civil Judge, Bhimavaram issued Order in I.A.No.351/2016 in**

O.S.No.237/2016, dated 20.09.2017 and hand over the possession.”

In Item No.2 of the above said order, there was a direction to hand over possession of the land to B-Party, i.e., the party of the 9th respondent herein as per the civil Court injunction order and also to maintain law and order. The writ petitioner is aggrieved of the said order, as the civil Court injunction order only protects the possession of the party, who is in possession of the property, but does not entail that party to obtain possession of the property of which the party is not in possession.’

4. It is also the submission of the learned counsel for the petitioner that a Civil Miscellaneous Appeal is filed and pending before a competent civil Appellate Court and that the Sub Divisional Magistrate and Sub Collector, by including the said term in his orders, dated 27.03.2018, usurped the jurisdiction of a civil Court, which is having seisin over the order.

5. Learned counsel for the unofficial respondents, while not disputing the chronology of events, would submit that the 9th respondent succeeded in an application for temporary injunction in the civil proceedings and that, therefore, the civil Court upheld her contention that she is in possession of the property and that therefore, the interests of the 9th respondent may be protected. He would further submit that the injunction order is granted to protect her possession, but fairly concedes that the direction to hand over possession of land to B-Party as per civil Court injunction order is some how incorporated in the matter, which is impugned and such an order shall not effect in any way the injunction orders granted by the civil Court.

6. Learned Government Pleader for Home submits that insofar as the Sub Divisional Magistrate's order, the respondents 5 & 6 have nothing to do and insofar as the said respondents, the writ petition is liable to be dismissed.

7. Recording the submissions, the Writ Petition is disposed of directing the official respondents not to implement the second term, i.e., **"further discussion happened and it was discussed to hand over the possession of land to Party B as per the Civil Court-Injunction Order and also to maintain Law and Order"**, as the civil Court is having seisin over the matter and it is for the civil Court to decide as to whether the injunction order granted by the trial Court shall be sustained or vacated. The civil Court shall dispose of the Civil Miscellaneous Appeal, in strict accordance with the procedure established by law, however, uninfluenced by observations, if any, in this order. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.SEETHARAMA MURTI, J

Date: 26th April, 2018

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