

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3399 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent/plaintiff, assailing the order, dated 04.02.2016, of the learned VII Additional District Judge, Mahabubnagar, holding Full Additional Charge of the post of learned IX Additional District Judge, Wanaparthi, passed in CMA.no.9 of 2014.

2. I have heard the submissions of Sri *S.Satyanarayana Moorthy*, learned counsel appearing for the revision petitioner/plaintiff ('plaintiff' for brevity); of Sri *V.Hanumantha Rao*, learned counsel appearing for the respondents 2 & 5; and of Sri *K.Sreenivas*, learned counsel appearing for the respondents 6 & 7. None appeared for the other respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: The plaintiff filed suit for perpetual injunction. In the said suit, the plaintiff also filed IA.no.393 of 2013, under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (for short, 'the Code') requesting to grant a temporary injunction in respect of the land of an extent of Ac.5.13 guntas, in Survey no.388/AA, situated at Thadiparthi Village of Gopalpet Mandal, morefully described in the schedule annexed to the petition and the plaint. The said application was resisted by the contesting defendants. The trial Court, by an order, dated 17.02.2014, allowed the said application and granted a temporary injunction in favour of the plaintiff. Aggrieved thereof, the defendants 1, 4 to 6 & 7

preferred an appeal in CMA.no.9 of 2014 before the learned VII Additional District Judge, Mahabubnagar, holding Full Additional Charge of the post of learned IX Additional District Judge, Wanaparthi. By the order impugned in this revision, the learned Additional District Judge allowed the civil miscellaneous appeal and dismissed the interlocutory application and vacated the temporary injunction order granted by the trial Court. Aggrieved thereof, the plaintiff preferred this civil revision petition.'

4. The case of the plaintiff, in brief, is this: 'She is the owner and possessor of the lands viz., Ac.2.24 guntas in Survey no.387/AA and Ac.8.00 guntas in Survey no.388/AA, situated at Thadiparthi Village of Gopalpet Mandal. Damodar Reddy, her father, sold the subject lands to her under a registered sale deed bearing Document no.468/1970 along with some other lands in some other survey numbers. Thereafter, she sold away some land i.e., the land in an extent of Ac.2.24 guntas in Survey no.387/AA and Ac.2.24 guntas in Survey no.388/AA to various purchasers under registered documents. After such sales, she became the owner and possessor of the remaining extent of land i.e., Ac.5.13 guntas in Survey no.388/AA, which is the plaint schedule property. The property is mutated in her name in revenue records. She was granted pattadar passbook and title deed document by the revenue authorities. Thus, she is the absolute owner in peaceful possession of the plaint schedule land. She is a resident of Hyderabad. She often visits Thadiparthi Village and supervises her agricultural properties. The plaint schedule property is adjacent to Wanaparthi Town. The market value of the subject land and the surrounding lands is increasing day by day. Some of the lands near to the plaint schedule

property were laid out into plots. However, the revision petitioner/plaintiff did not lay out her land into plots and is continuing in possession and enjoyment of the same as absolute owner. The defendants have no concern with her plaint schedule property and also her family. They are real estate businessmen. They demanded her to sell away the plaint schedule property to them. She refused to do so. In view of her refusal of the request made by the respondents, they are trying to interfere with her peaceful possession and enjoyment over the plaint schedule property. She resisted the illegal acts of the respondents with the help of her husband and villagers. Finally, on 10.06.2013, when she and her husband went to the petition schedule land, the respondents, having illegally trespassed into the land along with their supporters, questioned the title of the petitioner over the said land and tried to occupy the plaint schedule land by force. They further tried to erect stone pillars with an intention to make plots out of the land. The revision petitioner and her husband resisted the illegal interference by the respondents and their supporters with the help of the villagers. While leaving the plaint schedule land, the respondents threatened by saying that they would come again with much more force and occupy the plaint schedule land and that they cannot be stopped by anybody. Therefore, the plaintiff apprehends that the respondents may come at any time and occupy the plaint schedule land illegally, as they are politically influential persons and she is a poor person, not in a position to protect her possession over the plaint schedule property. Hence, she filed the suit for declaration of title against the respondents and the present interlocutory application for temporary injunction.'

5. The case of the contesting defendants, as stated in the counter of respondents 1, 4 to 6 & 7, in brief, is this: The material allegations in the affidavit of the plaintiff are false. The suit is filed by misrepresentation and suppression of facts. The allegations that the father of the plaintiff was the owner of the plaint schedule land; that it has fallen to his share in the family partition; that he sold the said land to the plaintiff, who is his daughter, in the year 1971; that she being a resident of Hyderabad is often visiting Thadiparthi Village and supervising the agricultural operations; that as the suit land is near to Wanaparthi, its price is increasing day by day; that the defendants are real estate businessmen and they demanded her to alienate the plaint schedule property to them and she refused to do so and, therefore, these defendants are causing interference with her alleged possession and enjoyment over the plaint schedule property are all false allegations. The plaintiff's father R.Damodar Reddy is the younger brother of one R.Narayan Reddy and Konda Reddy. Narayan Reddy is the eldest of the brothers. All the three brothers have got equal shares in the land in suit survey number to an extent of Ac.2.28 guntas each. They are also having similar shares in the other lands in the other survey numbers. The said fact is evident from Khasra Pahani of the year 1954-55. All the brothers were in peaceful possession of their lands. While so, elder of the brothers, R.Narayan Reddy, sold Ac.1.39 guntas out of the land in his possession i.e., out of the land in Ac.2.28 guntas in Survey no.388/AA under registered Sale Deed bearing Document no.3214/2003, dated 31.12.2003, to one Vadde Chennaiah, who is the 1st defendant herein and delivered physical possession of the said land to the 1st defendant. The name of Vadde Chennaiah was recorded in the revenue records and he was granted pattedar

passbooks. The 1st defendant sold Ac.0.21 guntas out of the said land purchased by him to the defendants 4 to 7 under a registered Sale Deed bearing Document no.1979/2006, dated 18.03.2006, and delivered physical possession of the said land, which is within specific boundaries. Again the defendants 4 to 7 sold Ac.0.21 guntas of the said land to (1) A.Srinivasulu, S/o. A.Sanjanna; (2) S.Ram Chandra Reddy, S/o. Bal Reddy; (3) B.Sreesailam, S/o. B.Narayana; (4) K.Ravinder, S/o.K.Savanna; and (5) Smt.Konda Shashikala, D/o.K.Ram Chandraiah, under separate Sale Deeds bearing Document nos.(1) 3405/2011, dated 03.06.2011; (2) 3011/2011, dated 16.05.2011; (3) 3012/2011, dated 16.05.2011; (4) 3013/2011, dated 16.05.2011, and delivered physical possession to them. Their names were recorded in the revenue records; and, after bifurcation of the Survey no.388/4, they were issued pattedar passbooks for their respective lands purchased by them. Having suspected the *mala fide* intentions of the plaintiff, the above said purchasers filed a caveat, on 31.05.2013, against the plaintiff in respect of the suit schedule survey numbers. The said fact is known to the plaintiff; but she deliberately suppressed the said facts and filed the present suit without impleading them and obtained an *ex parte* injunction order though she is not in possession of the suit schedule property. She is trying to evict the said purchasers under the guise of *ex parte* injunction order, which was obtained by suppression of facts and without impleading the said purchasers as parties to the suit. Hence, the suit and the interlocutory application are bad for non-joinder of parties and are liable to be dismissed. The 1st defendant is left with Ac.1.18 guntas in Survey no.388/AA. He sold the said land under registered Sale Deed bearing Document no.8626/2009, dated 23.12.2009, to the 4th defendant and three other persons namely (1)

A.Sreenu; (2) S.Ram Chandra Reddy; and (3)K.Ravinder, and delivered possession of the lands sold to them. The said three persons are not parties to the suit and the interlocutory application. The names of the 4th defendant and the said three purchasers are recorded in the revenue records as owners and possessors of the lands purchased by them and they were issued pattedar passbooks and ROR proceedings. Thus, the plaintiff is not in physical possession of the subject land. There is no *prima facie* case or balance of convenience in her favour. The plaintiff originally filed OS.no.18 of 2010, on the file of this Court for declaration of title and recovery of possession in respect of Ac.5.13 guntas of land in Survey no.388/AA of Thadiparthi Village against 22 defendants including the 1st defendant herein by impleading him as 7th defendant in the said suit. The said suit is pending. The suit land is an Inam land and without there being grant of an Occupancy Rights Certificate (ORC), no person is entitled to **make** any alienations. In the instant case, the plaintiff realised the defect in her claim in respect of her sale deed executed by her father much earlier to the grant of ORC. Hence, she filed appeal under Section 5 of the A.P. Rights in Land and Pattedar Passbooks Act, 1971. Her said appeal was dismissed by an order, dated 20.01.2012. In the said order, the Revenue Divisional Officer observed that there is a civil suit in OS.no.18 of 2010 pending between the parties for declaration of title and possession and that soon after receipt of the findings and judgment of the Senior Civil Court, Nagarkurnool, action will be taken in the present appeal. The petitioner, in a fraudulent manner by colluding with revenue authorities, filed another petition in the year 2011 for grant of ORC and the RDO; without taking into consideration the facts and the physical possession over the lands claimed in the ORC

in the year 1971-72, the RDO passed orders to issue ORC in favour of the petitioner. However, the defendants 1 & 4 to 7 filed an appeal under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, before the Joint Collector, Mahabubnagar, against the order of the RDO and the same is pending. The said fact is also not disclosed in the present suit or in the affidavit filed in support of the application for grant of temporary injunction. The plaintiff filed a caveat in the Senior Civil Court, Nagarkurnool, on 01.06.2013. In the caveat petition, she categorically mentioned that one Padma, Chennaiah, i.e., the 1st defendant and others, i.e., defendants 4 to 7, occupied her land and that a suit for declaration of title and recovery of possession with regard to the above said land is already filed and that the said persons are trying to alienate the suit land. Hence, it is crystal clear that she admitted the fact that the said persons are in possession over the suit land. She kept this Court (trial Court) in dark and obtained *ex parte* injunction order. Since the plaintiff is guilty of suppression of material facts, her case is liable to be rejected. Hence, the application may be dismissed.'

6. During the course of enquiry before the trial Court, Exs.P-1 to P-23 and Exs.R-1 to R-27 were marked. No oral evidence was adduced. As noted, the trial Court allowed the application of the plaintiff and made the ad interim injunction granted, on 19.06.2013, absolute. However, the appeal preferred by the defendants 1, 4 to 6 & 7 was allowed. Hence, the plaintiff is before this Court.

7. In this backdrop, learned counsel for the plaintiff submits as follows: 'The trial Court passed a well-considered order. The Court below, by the impugned order, which is unsustainable, unnecessarily interfered with the well-considered order of the trial Court and

erroneously vacated the temporary injunction order granted in favour of the plaintiff. The Court below ought to have seen that an *ex parte* injunction order was granted, on 19.06.2013, and the said order was made absolute by the trial Court by its order, dated 17.02.2014, passed in the interlocutory application. The Court below erred in allowing the civil miscellaneous appeal of the contesting defendants solely on the ground that the previous suit was withdrawn and it contains an averment that the plaintiff is not in possession. In doing so, the Court below ignored the contents of the memo filed for withdrawal, wherein she specifically stated that her possession was restored. The trial Court categorically found that the plaintiff is in possession and enjoyment of the plaint schedule property and, therefore, she is entitled to a temporary injunction order. Therefore, the trial Court made absolute, the interim order of injunction. The Court below did not properly appreciate the facts and failed to look into the correct legal position obtaining and applicable to the case facts. The appeal is allowed by the Court below on the sole ground that in the suit and in the caveat application, there are averments showing that the plaintiff is not in possession of the plaint schedule property. The Court below failed to take note of the subsequent events, which were established by the proceedings issued by the competent revenue officers, who conducted an enquiry and issued Occupancy Rights Certificate based on the possession of the revision petitioner, which is questioned by the contesting defendants by filing WP.no.37318 of 2013. The Court below ought to have seen that the miscellaneous petition in WPMP.no.46433 of 2013 was dismissed by the High Court. The Court below ought to have seen that R.Narayan Reddy is a signatory to the Sale Deed of the plaintiff as a witness and that he is also a party to the Deed of Partition, dated 14.05.1955,

and that he obtained Occupancy Rights Certificate for his share of property based on the above Partition Deed. Therefore, the Court below ought to have seen that the claim of the contesting defendants is untenable and that the case of the plaintiff that she is in possession of the plaint schedule property as on the date of the institution of the present suit is only correct and that the said fact is borne out by the contents of the memo filed in OS.no.18 of 2010. Hence, the revision petition may be allowed and the impugned order of the appellate Court may be set aside and the order of the trial Court be restored.'

8. The learned counsel for the plaintiff, having pointed out certain observations in the impugned judgment of the Court below, stated that the Court below went to the extent of observing that the suit is misconceived and that when the civil miscellaneous appeal is filed assailing an order passed in an interlocutory application, the Court below ought not have made such far reaching observations, which will have a bearing on the final result of the matter.

9. Learned counsel appearing for the two sets of the defendants, while supporting the order of the Court below, contended as follows: 'The suit and the interlocutory application for temporary injunction are liable for rejection on the sole ground of misrepresentation and suppression of facts. The trial Court failed to take note of the facts in proper perspective and arrived at incorrect conclusions. The appellate Court considered the facts and the legal position obtaining in proper perspective and in a correct manner and gave valid reasons for reversing the order and decretal order of the trial Court and for dismissing the application for temporary injunction filed by the plaintiff. The Court below recorded a finding that both sides filed

revenue records and that there is no cogent evidence that the plaintiff is in physical possession of the plaint schedule land as on the date of the filing of the suit and that the documents in exhibit 'R' series rule out her contention with regard to her physical possession and enjoyment over the plaint schedule land as on the date of the filing of the suit. Not only for suppression and misrepresentation of facts but also on finding that the plaintiff is out of possession of the plaint schedule property, the Court below held that the plaintiff has no *prima facie* case and that her suit is misconceived. In view of the fact that the order of the Court below is well-reasoned, it does not warrant interference.'

10. I have given earnest consideration to the facts and submissions.

11. To begin with, it is apt to refer to the settled legal position with regard to granting or refusal of temporary injunctions. Ordinarily, the following three main principles govern the grant or refusal of injunction: a) *prima facie* case; b) balance of convenience; and, c) irreparable injury. (See: **Hindustan Petroleum Corporation Ltd., v. Srimannarayan** [(2002) 5 SCC 760]). In grant or refusal of injunction, pleadings and documents play vital role. In the broad category of *prima facie* case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must adjudge the existence or otherwise of a *prima facie* case. The Court while granting or refusing to grant injunction should exercise sound judicious discretion to find the amount of substantial mischief or injury which is likely to be caused to the plaintiffs, if the injunction is refused, and compare it with that which is likely to be caused to the other side, if the injunction is granted.

Only on weighing competing possibilities or probabilities of likelihood of injury, an injunction would be issued. In addition to the three basic principles, a Court while granting injunction must also take into consideration the conduct of the parties. A person who had kept quiet for a long time and allowed others to deal with the property exclusively would not be entitled to an order of injunction. The Court should not interfere only because the property is a very valuable one. (See: **Mandali Ranganna and Ors. v. T. Ramachandra** [AIR 2008 SC 2291]). Grant or refusal of injunction would have serious consequences depending upon the nature thereof. In dealing with such matters the Court must make all endeavours to protect the interest of the parties by balancing the conveniences and inconveniences. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands. (See: **Seema Arshad Zaheer and Ors. v. Municipal Corporation of Greater Mumbai and Ors.** [(2006)5 SCC 282]).

12. Now I shall revert to the facts of the case. In the case on hand, the plaintiff admittedly filed a suit – OS.No.18 of 2010 on the file of Senior Civil Court, Nagarkurnool, in respect of the very same property and she has not pressed the said suit by filing a memo. A caveat petition was lodged, on 31.05.2013, in the Court of the Senior Civil Judge, Nagarkurnool, by the purchasers of a part of the land namely A. Srinivasulu and others, who purchased various extents of subject lands from the defendants 4 to 7. In the memo filed for withdrawal of the suit, the plaintiff herein stated that she got ORC from the RDO *vide* proceedings in ORC.No.B/355/2012, dated

21.12.2012, and that she has taken over possession of the land and that some persons started to interfere over the suit land, she filed a separate suit, (that is, the instant suit) for declaration of title and injunction and so she is not pressing the suit (OS.NO.18 of 2010) and hence, the said suit may be dismissed in the interests of justice. Relying upon the contents of this memo, the respondents herein contend that admittedly the plaintiff was not in possession of the subject land and that she herself alleged that after the ORC was granted on 21.12.2012, she has taken over possession of the land and that the said allegation is false and that she suppressed the fact that earlier a suit was filed and was withdrawn by her by filing a memo, and, then, she had also misrepresented the facts. Moreover, the land is said to be an inam land. There is no ORC granted to any party prior to the ORC abovementioned, which is referred to in the memo filed by the plaintiff herein in her former suit. The present suit is filed without impleading the persons who were said to have purchased portions of the subject land from some of the defendants in the suit. The defendants claim that R. Narayana Reddy one of the brothers of the father of the plaintiff, had sold Ac.1.39 guntas from out of Ac.2.28 guntas in his possession in Sy.no.338/AA under registered sale deed, dated 31.12.2003, to the 1st defendant and delivered possession to him and that later he sold Ac.0.21 guntas out of the said extent of Ac.1.39 guntas in the said survey number to defendants 4 to 7 under registered sale deed, dated 18.03.2006, and delivered possession to the said purchasers and that the said purchasers alienated the above said land viz., Ac.0.21 guntas to A. Srinivasulu and three other purchasers and delivered possession of various extents sold to them and that the said persons in possession of the said property are not impleaded deliberately by the

plaintiff. Revenue records also evidence the names of the purchasers including the names of A. Srinu (Srinivasulu) and two others, who are said to be in physical possession of the plaintiff schedule properties and who are not parties to the suit. According to the case of the contesting defendants, the plaintiff filed an appeal under Section 5 of the Act of 1971 and that the RDO, by his orders, dated 20.01.2012, dismissed the said appeal by observing that the civil suit, OS.No.18 of 2010, between the parties for declaration of title is pending and that soon after the disposal of the said suit, action will be taken and that suppressing the said facts the plaintiff having colluded with the revenue authorities filed another petition in the year 2011 for grant of ORC and that the RDO passed orders issuing an ORC in favour of the plaintiff and that, therefore, the defendants 1, 4 to 6 & 7 filed an appeal under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, before the Joint Collector, and the said appeal is pending and all the said facts are also suppressed by the plaintiff. In the impugned judgment, the Court below has taken note of the following facts: 'The plaintiff suppressed material facts. Exhibits in 'R' series rule out the claim of the plaintiff that she is in physical possession & enjoyment of the suit schedule land as on the date of the filing of the suit. There is no cogent evidence produced to *prima facie* establish the plaintiff's possession over the suit land as on the date of the institution of the suit. No explanation is forthcoming for not mentioning about the pendency of the former suit in the present suit, which was later withdrawn by filing a memo, dated 11.09.2013.' Having so noted, the Court below has allowed the appeal of the defendants 1, 4 to 6 & 7 and dismissed the application for temporary injunction of the plaintiff. When there are registered documents in

respect of part of the plaint schedule property not only in favour of the defendants but also in favour of third parties, no reasons are forthcoming as to why the present suit for perpetual injunction was instituted by withdrawing a comprehensive suit wherein one of the reliefs is declaration of title. No doubt, while disposing of the CMA, the learned Additional District Judge ought not to have made a far reaching observation in the judgment rendered in the CMA that the suit is misconceived, as rightly urged by the learned counsel for the plaintiff.

13. On a careful perusal of the material record, this Court is satisfied that the judgment of the Court below, which is sustainable under facts and in law, does not brook interference.

14. In the result, the Civil Revision Petition is dismissed. Since the suit is of the year 2013, it is needless to state that the trial Court shall endeavour to dispose the suit as expeditiously as possible in accordance with the procedure established by law uninfluenced by the observations in the order impugned of the learned Additional District Judge and the observations, if any, made in the instant order of this Court.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

Date: 10th October, 2018

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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**CIVIL REVISION PETITION No.3399 of 2016**Date: 10th October, 2018

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