

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3264 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, assailing the order, dated 19.03.2018, of the learned Senior Civil Judge, Addanki, passed in C.M.A.No.1 of 2013, whereby the learned Senior Civil Judge, having allowed the said appeal, had set aside *ex parte ad interim* injunction order, dated 16.04.2013, passed in I.A.No.577 of 2013 in O.S.No.48 of 2013.

2. I have heard the submissions of Sri *M.S.N.Prasad*, learned counsel appearing for the revision petitioner/plaintiff; and of Smt *Nimmagadda Revathi*, learned counsel appearing for the respondents/defendants. I have perused the material record.

3. From the pleadings and submissions made, the following facts, which are necessary for consideration, are noticeable: 'The revision petitioner/plaintiff ('plaintiff' for brevity) filed a suit against the respondents/defendants ('defendants' for brevity) for perpetual injunction in respect of Ac.1.70 cents out of Ac.3.96 cents in Survey No.143/2 of Manikeswaram Village of Addanki Mandal, morefully described in the schedule annexed to the plaint. In the said suit, the plaintiff also filed I.A.No.577 of 2013, under Order XXXIX Rules 1 & 2 of Civil Procedure Code, 1908, requesting to grant a temporary injunction, pending disposal of the suit. On the day the suit was instituted, the learned Principal Junior Civil Judge, Addanki, heard the learned counsel for the plaintiff and granted an *ex parte ad interim* injunction order till 02.05.2013. The said order granted, on

16.04.2013, by the learned Principal Junior Civil Judge, Addanki, reads as under:

“Heard the Petitioner counsel, perused the record such as Registered WILL, Rythuvari Patta, property Certificate, Pattadar pass book, title deed in favour of the Plaintiff and other connected record. As seen from them, it is clear that the plaintiff is in prima facie possession of the suit schedule property. In these circumstances, the interference caused by the defendants varies a prima facie case in favour of plaintiff and the balance of convenience is also found in favour of plaintiff.

Therefore, the defendants here are restrained by way of *ad interim injunction* from interfering with the right of plaintiff over the suit schedule property and accordingly granted till 2.5.2013.

Meanwhile the plaintiff is directed to comply Order 39 Rule 3 forthwith.”

The 1st defendant, without filing a counter in the said interlocutory application and without requesting the trial Court to dispose of the interlocutory application filed for grant of temporary injunction, filed a civil miscellaneous appeal in C.M.A.No.1 of 2013 before the Senior Civil Court, Addanki, and assailed the afore-stated *ex parte ad interim* injunction order. By the order, which is impugned, the learned Senior Civil Judge, Addanki, allowed the said civil miscellaneous appeal filed by the 1st defendant and had set aside the *ex parte ad interim* injunction order and directed the trial Court to dispose of the interlocutory application in I.A.No.577 of 2013 in O.S.No.48 of 2013 on merits, after considering versions of both parties. Aggrieved thereof, the plaintiff filed this revision petition.’

4. Learned counsel for the plaintiff contended as follows: ‘The Court below ought to have seen that the civil miscellaneous appeal was preferred by the 1st defendant against an *ex parte ad interim* injunction order (docket order); and, therefore, it ought to have

dismissed the civil miscellaneous appeal at the threshold as not maintainable and directed the 1st defendant to first approach the trial Court and make a request to decide the said interlocutory application on its merit. However, the Court below allowed the CMA to be pending on its file and disposed it of after five long years. The Court below ought not to have interfered with *ad interim* injunction order, as it was only an order passed *ex parte* and as the defendants are entitled to approach the trial Court and file their counters and make a request to the trial Court for vacating the *ad interim* injunction order and for dismissing the interlocutory application. When an *ex parte ad interim* injunction order is granted in any interlocutory application filed in a suit for perpetual injunction, the defendants, on receiving notices and *ex parte* injunction orders/warrants, are obliged to approach the trial Court first; and, they are not entitled to challenge an *ex parte ad interim* injunction order by preferring a civil miscellaneous appeal, as such an *ad interim* injunction order is not an order passed on merits and as the Court, while granting such *ex parte* orders, will only consider the pleadings and the documents of the plaintiff. The course adopted by the successive Senior Civil Judges, Addanki, in entertaining the civil miscellaneous appeal and keeping it pending and allowing it after five years, caused a lot of prejudice to the plaintiff. In deed, the trial Court extended the *ex parte ad interim* injunction orders on petitions filed from time to time by the plaintiff for extension of the said orders even though a civil miscellaneous appeal is pending before the Senior Civil Court. The impugned order of the Senior Civil Court, Addanki, setting aside an *ex parte ad interim* injunction order granted by the trial Court is unsustainable. No reasons, much less valid reasons, are assigned in the impugned order. The interlocutory application

for temporary injunction is still pending before the trial Court for adjudication. Hence, the course adopted by the Court below while disposing of the civil miscellaneous appeal is unwarranted and not correct.'

5. Learned counsel for the 1st defendant, while supporting the orders in the civil miscellaneous appeal, submitted that since a long time i.e., from the date of disposal of the CMA, on 19.03.2018, there is no order in favour of the plaintiff and that the suit is now at the stage of trial and, therefore, the civil revision petition may be dismissed and the trial Court may be directed to dispose of the suit expeditiously.

6. However, learned counsel for the plaintiff stated that since the interim injunction order was extended by the trial Court from time to time and was in force till the civil miscellaneous appeal was allowed, this Court may protect the interests of the plaintiff till either the interlocutory application or the suit is disposed of by the trial Court after full fledged trial.

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

8. In the first place, it is to be noted that the plaintiff having filed a suit for perpetual injunction, obtained an *ex parte ad interim* injunction order in an interlocutory application filed along with the suit. The *ex parte ad interim* injunction order granted by the trial Court is already extracted supra. The defendants, having received notices and the warrants of *ex parte ad interim* injunction, did not approach the trial Court for vacating the said *ad interim* injunction order and for disposing of the interlocutory application filed for

granting temporary injunction. However, the 1st defendant filed the civil miscellaneous appeal assailing the docket order i.e., *ex parte ad interim* injunction order granted by the trial Court. In such circumstances, as the civil miscellaneous appeal was preferred only against the *ad interim* injunction order and not against a final order passed by the trial Court in the interlocutory application, the Court below i.e., the learned Senior Civil Judge, Addanki, ought to have disposed of the civil miscellaneous appeal at the threshold one way or other, and directed the trial Court to dispose of the interlocutory application on its merit, as the trial Court, is any how obliged to dispose of the interlocutory application within the statutory time frame. In the alternative, the learned Senior Civil Judge ought to have disposed of the CMA within a short time of its institution by passing an appropriate order. Though the civil miscellaneous appeal was filed in the year 2013, the learned successive Senior Civil Judges, Addanki, allowed the CMA to remain pending for about five years. And, by the orders impugned, while allowing the CMA, on 19.03.2018, the learned Senior Civil Judge vacated the *ex parte ad interim* injunction order. Though, the order assailed in the CMA is an *ex parte ad interim* injunction order granted by the trial Court, the Court below proceeded to examine the said order, as if it were a final order passed on merits in the interlocutory application filed for granting temporary injunction. Ignoring the fact that the order assailed is an *ex parte* order, the Court below erroneously applied the yardsticks, which will be generally be applied while examining the correctness of a final order passed in an interlocutory application filed for granting temporary injunction. It is to be noted that the learned Senior Civil Judge, Addanki, who passed the orders in CMA, failed to appreciate the fact that the trial Court stated in its order

that it perused the registered Will, Ryotwari patta, property certificate, pattadar passbook and title deed in favour of the plaintiff and other connected record and then proceeded to record brief reasons and thus granted the *ad interim ex parte* injunction order, that too for a limited period i.e., till 02.05.2013. It is to be noted that for disposal of a CMA which is filed against an *ad interim* injunction order granted *ex parte*, there will not be any record worth the name before the appellate Court except the Memorandum of civil miscellaneous appeal with the grounds urged therein and the copy of the *ex parte* order granted by the trial Court. In such a CMA, the lower appellate Court will not be in a position to examine the documents of the plaintiff, which are referred to in the order of the trial Court, unless the record is called for from the trial Court. Further, the pleadings of the defendant/appellant and the defendant's documents also will not be available for consideration while disposing of the CMA. The record in the case on hand does not disclose that the Court below called for records of the trial Court and perused the pleadings of the plaintiff and plaintiff's documents. Therefore, as rightly contended before this Court by the plaintiff, the 1st defendant ought not have preferred a CMA against such an order and ought to have approached the trial Court first with a request to vacate the *ad interim* injunction order and decide the interlocutory application on its merit. But the 1st defendant did not do so. The certified copy of the Proceeding Sheet maintained by the trial Court in I.A.No.577 of 2013, which is filed before this Court, on a perusal would show that though initially *ad interim* injunction order is granted by the trial Court for a limited period and a civil miscellaneous appeal preferred before the Senior Civil Court assailing the said order is pending, the applications for extension of

the *ad interim* injunction order were filed before the trial Court and the trial Court extended the said interim order from time to time; and that for the last time, the *ad interim ex parte* injunction order is extended till 17.01.2018. Thereafter, Sankranti Vacation intervened and the civil miscellaneous appeal was disposed of, on 19.03.2018, and the *ex parte ad interim* injunction order was set aside by the learned Senior Civil Judge by the impugned order.

9. In this backdrop of the above factual matrix, it is to be noted that the *ex parte ad interim* injunction order granted by the trial Court, on 16.04.2013, was extended from time to time and was in force till 17.01.2018. Though the civil miscellaneous appeal was allowed and the *ex parte ad interim* injunction order is set aside, on 19.03.2018, the Court below only examined the correctness of the docket order and sufficiency of the reasons assigned, but did not go into the merits of the matter; and, while setting aside the *ex parte ad interim* injunction order, the Court below directed the trial Court to dispose of the interlocutory application on its merit. Both the learned counsel fairly submit that the interlocutory application has to be disposed of by the trial Court on its merit and that the suit is now at the stage of trial.

10. On the above analysis, this Court is of the considered view that the civil revision petition can be disposed of with appropriate directions.

11. In the result, the Civil Revision Petition is disposed of confirming the impugned order insofar as it directed the trial Court to dispose of the interlocutory application on its merit after giving an opportunity of hearing to both the sides. However, both the parties

are directed to maintain *status quo* as on 19.03.2018, the date of disposal of the civil miscellaneous appeal by the Senior Civil Court, Addanki. It is needless to state that the trial Court shall dispose of the interlocutory application or in the alternative, the suit itself within one (01) month from the date of receipt of a copy of this order, as the suit is a sufficiently old suit and is at the stage of trial. In the event the trial Court considers that it is not possible to dispose of the suit finally within the stipulated time, the trial Court shall, however, dispose of the subject interlocutory application within the time stipulated supra. It is made clear that this Court has not expressed any opinion on the merits of the matter.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.



M.SEETHARAMA MURTI, J

Date: 24th September, 2018

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203

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**CIVIL REVISION PETITION No.3264 of 2018**

Date: September, 2018

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