

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 3269 of 2018

ORDER:

This civil revision petition is arising out of the order dated 16.03.2018 passed in C.M.A.No.18 of 2015 by the IV Additional District and Sessions Judge (FTC), Sathupally. The revision petitioner-Tanguturi Annapurna is the daughter of the respondent-Smt. Guntupally Lakshamma.

2. The respondent/mother (plaintiff) filed the suit O.S.No.594 of 2014 on the file of the Senior Civil Judge, Sathupally, against the revision petitioner/daughter (defendant). For convenience sake, the parties will be referred as they were arrayed in O.S.No.594 of 2014.

3. Brief facts of the case are as follows:

Plaintiff is the mother of the defendant. She is the absolute owner and possessor of the suit schedule property admeasuring Ac.2-30 guntas in Survey No.393/A of Somavaram Revenue Village, Wyra Mandal, Khammam District, having acquired the same through a registered sale deed Document No.2979/1973 dated 07.06.1973. She executed a registered Gift Deed dated 19.11.2008 in favour of the defendant, bequeathing the abovementioned agricultural land, allegedly on the request of the defendant to settle some land property in her name and that she would look after the welfare of the plaintiff, and also on the oral promise made by the defendant that she would deposit an amount of Rs.3,00,000/- in January 2012 in favour of the plaintiff. But as the defendant did not keep up her promise, the plaintiff executed a Cancellation Deed dated 04.09.2012 whereby she cancelled the registered Gift Deed that she earlier made in favour of her daughter.

Basing on the registered Gift Deed, the defendant daughter had obtained pattadar passbooks and title deeds in respect of the said agricultural land from the Tahsildar, Wyra Mandal.

Basing on the Cancellation Deed dated 04.09.2012, the plaintiff has filed an appeal before the Revenue Divisional Officer (RDO), Khammam, in Appeal No.A3/4957/2012, dated 28.02.2014 seeking cancellation of pattadar passbooks and title deeds issued in favour of the defendant. The RDO entertained the appeal and cancelled the pattadar passbooks and title deeds issued in favour of the defendant.

Assailing the order passed by the RDO in Appeal No. A3/4957/2012, the defendant approached this Court by way of filing W.P.No.10874 of 2014. This Court, by order dated 10.04.2014 disposed of the said writ petition observing that the defendant had an efficacious alternative remedy of revision before the Joint Collector, and hence granted liberty to the defendant to avail the remedy of revision within two weeks from the date of that order; and in the meanwhile, status quo existing as on that day was directed to be maintained.

The defendant has also filed W.P.No.10913 of 2014 seeking suspension of operation of cancellation deed dated 04.09.2012. This Court, by order dated 10.04.2014, issued notice before admission and directed the parties to maintain status quo as on the date of order.

The defendant approached the revisional authority-joint collector by way of filing revision petition. The revisional authority has disposed of the revision by order dated 16.11.2016 observing that the matter of Gift Deed and Cancellation of Gift Deed is a case of Civil nature, which cannot be decided by the revisional authority, and therefore set aside the order passed by the RDO, and directed the parties to approach appropriate forum for deciding the title.

During pendency of revision before the Joint Collector, the plaintiff has filed O.S.No.594 of 2014 on the file of Senior Civil Judge, Sathupalli (for short, 'the trial Court'), seeking cancellation of the registered Gift Deed that she executed in favour of the defendant. In the said suit, the plaintiff has also filed I.A.No.1015 of 2014, under Order 39 Rules 1 and 2 of Code of Civil Procedure, seeking temporary injunction.

The trial Court, after hearing the arguments of both the counsel, and on consideration of documents Exs.P1 to P10 filed on behalf of the plaintiff; and Exs.R1 to R5 filed on behalf of the defendant; dismissed the petition by order dated 29.06.2015.

Aggrieved by the order passed by the trial Court dismissing the I.A.No.1015 of 2014, the plaintiff filed an appeal before the IV Additional District & Sessions Judge (FTC), at Sathupalli, (for short, 'the appellate Court') in C.M.A.No.18 of 2015.

The appellate Court, by order dated 16.03.2018, allowed the appeal filed by the plaintiff, thereby granting temporary injunction to the plaintiff against the defendant.

Aggrieved by the order passed by the appellate Court, the defendant has preferred the present civil revision petition.

4. Heard the arguments of learned counsel for the revision petitioner (defendant), and the learned counsel for respondent (plaintiff).

5. Learned counsel for the revision petitioner/defendant submits that the defendant is the daughter of the respondent/plaintiff. The plaintiff has executed a registered Gift Deed dated 19.11.2008 in favour of the defendant, and by virtue of the Gift Deed, the defendant is in possession of the suit schedule property, and that the suit schedule property was leased out to third parties, and that after a lapse of four years, the plaintiff unilaterally executed the Cancellation Deed while the status quo orders passed by this Court are in existence and hence, the impugned order passed by the appellate Court is illegal and arbitrary and is liable to be set aside.

6. Learned counsel for the respondent/plaintiff would submit that the plaintiff is in possession and enjoyment of the suit schedule property, which is an agricultural land in an extent of Ac.2-30 guntas in Survey No.393/A, Somavaram Revenue Village, Wyra mandal, Khammam District; and the plaintiff is cultivating the land.

7. Admittedly, there is a dispute between the parties with regard to possession over the suit schedule property. The defendant claims her title and possession over the suit schedule property by virtue of the Gift Deed, and the plaintiff claims her title and possession over the suit schedule property as the Gift Deed was cancelled by her through a Cancellation Deed. For grant of injunction, the party seeking injunction has to show that it has a prima facie case, balance of convenience and that it would suffer irreparable loss if injunction is not granted.

8. In view of the rival contentions, the fact with regard to title and possession of the suit schedule property has to be decided by the trial Court by taking into consideration the evidence that may be adduced by the parties and after affording an opportunity of hearing to both sides. It is pertinent to note that this Court, by order dated 10.04.2014 in W.P.No.10874 of 2014, while ordering notice before admission, has directed the parties to maintain status quo as on that date. Subsequently, the suit proceedings were initiated before the trial Court and the trial Court dismissed the temporary injunction application I.A.No.1015 of 2014 filed by the plaintiff. The appellate Court,

by the impugned order dated 16.03.2018 in CMA No.18 of 2015, has allowed the appeal filed by the plaintiff thereby granting temporary injunction in favour of the plaintiff.

9. Hence, ends of justice would be met if both the parties are directed to maintain status quo as on today over the suit schedule property. The party whoever succeeds in the suit proceedings may realize the usufruct after the disposal of suit. There is no imminent danger or immediate urgency for deciding the rights of parties at this stage, that too in a revision petition. In a revision, rectification of an error apparent on the face of the record only can be considered. Since it is a question of fact, it can be decided by the trial Court.

10. Therefore, both the parties are directed to maintain status quo as on date, over the suit schedule property till disposal of the suit. The trial Court is directed to dispose of the suit O.S.No.594 of 2014, as expeditiously as possible, after giving opportunity to both the parties to adduce evidence on their behalf.

11. With the above direction, the civil revision petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J

10th August, 2018

MJL / Ksm

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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