

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.4259 of 2018

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred by the petitioner/plaintiff against the order dated 11.04.2018 in C.M.A.No.4 of 2013 passed by the Senior Civil Judge, Sathupally, Khammam District (lower appellate Court), dismissing the appeal filed by her against the order and decretal order dated 10.06.2013 in I.A.No.141 of 2012 in O.S.No.67 of 2012 passed by the Principal Junior Civil Judge, Sathupally (trial Court).

The petitioner is plaintiff and the respondent is defendant in the suit O.S.No.67 of 2012. For the sake of convenience, the parties are referred to as they were arrayed in the suit before the trial Court.

The plaintiff filed suit O.S.No.67 of 2012 for perpetual injunction against the defendant in respect of the suit schedule land measuring Ac.1.17 guntas in Sy.Nos.313/A and 295/A, situated at Kakarlapalli Village, Sathupalli Mandal, Khammam District. Along with the suit, the plaintiff also filed an application in I.A.No.141 of 2012 under Order 39 Rule 12 r/w. Section 151 of C.P.C., seeking temporary injunction in her favour. On consideration of the evidence and the material on record, the trial Court dismissed the said

application by order dated 10.06.2013. Challenging the said order, the plaintiff filed an appeal in C.M.A.No.4 of 2013 before the lower appellate Court. After considering the rival contentions, the lower appellate Court dismissed the said appeal through the impugned order dated 11.04.2018. Aggrieved by the same, the plaintiff has preferred the present Civil Revision Petition.

Heard Sri P.V. Venkata Ravi Sankar, learned counsel for the petitioner/plaintiff and Sri M.M.M. Srinivasa Rao, learned counsel for the respondent/defendant. Perused the impugned order and material on record.

The revision petitioner-plaintiff's case is that she purchased the schedule property from the respondent under a saada Agreement. The plaintiff is the wife of the younger brother of respondent. The schedule property belongs to the respondent and he sold away the property in favour of the plaintiff under possessory agreement dated 05.11.1987 for a total consideration of Rs.42,000/-. The entire sale consideration was received by the respondent and the plaintiff was inducted into possession of the schedule property on the same day. The plaintiff, to prove her contention filed Ex.A1-saada agreement, Ex.A2-pattadar passbook issued by Mandal Revenue Officer, Sathupalli.

The case of the respondent-defendant is that he never sold the property to the plaintiff for a consideration of Rs.42,000/-. The plaintiff never came into possession of the petition schedule property at any point of time. Challenging the pattadar passbooks and title deeds issued in favour of the plaintiff, he has filed an appeal No.A3-1637-2007 before the Revenue Divisional Officer (RDO), for cancellation of pattadar passbooks and title deeds of the plaintiff, and the same was allowed, and the RDO directed the Mandal Revenue Officer (MRO) to cancel the passbooks and title deeds issued in favour of the plaintiff, and that the MRO issued pattadar passbooks and title deeds in favour of respondent and, therefore, the respondent is in possession of the petition schedule property. The plaintiff approached the Joint Collector by way of a Revision Petition challenging the order dated 15.02.2011 passed by the RDO. The revision petition was dismissed on 16.08.2014.

The plaintiff claimed title over the petition schedule property basing on the saada agreement and, subsequently, possession was delivered to her by the respondent. The name of the plaintiff was mutated in the revenue records and the 13-B certificate and pattadar passbooks and title deeds were issued in her favour. According to the plaintiff, she is in possession of the property by virtue of documents of mutation of her name (Ex.P1), 13-B certificate (Ex.P2), pattadar

passbook (Ex.P3), pahanies for the years 2010-11 (Ex.P4), pahanies for the year 2011-12 (Ex.P5 and P6), market value certificate (Ex.P7). It is her case that after cancellation of her 13-B Certificate (Ex.P2), possession was not delivered to the respondent and the plaintiff is still continuing in possession of the property.

The trial Court came to the conclusion that as the pattadar passbooks and title deeds issued in favour of the plaintiff were ordered to be cancelled by the RDO, the plaintiff became out of possession of the petition schedule property. Later, the plaintiff approached the Joint Collector by way of revision petition but the revision petition also went against her. Therefore, she approached this Court by filing writ petition (W.P.No.31334 of 2014).

The entire case of the appellant-plaintiff, and the respondent-defendant, is based on revenue records and the proceedings taken place before the revenue authorities. The proceedings of the revenue authorities are challenged in the writ petition and the same is pending. The trial Court came to the conclusion that the order passed by RDO has not become final as the writ petition filed by the petitioner is pending before this Court. Observing the same, the trial court came to the conclusion that the possession of either the plaintiff or the defendant cannot be decided over the suit schedule property unless a full-fledged trial is conducted. In

Paragraph 12 of the order passed by the trial Court, it is observed as under:

“..... it can be deemed that the respondent is presently in possession of petition schedule property but not the petitioner and when the pattadar passbook and title deed were ordered to be cancelled by the RDO, Khammam in favour of petitioner became out of possession of petition schedule property”

The plaintiff has filed the suit O.S.No.67 of 2012 for perpetual injunction and also filed I.A.No.141 of 2012 in the said suit for temporary injunction against the respondent. The plaintiff has to prove that she has prima facie case, balance of convenience in her favour, and irreparable loss in order to obtain temporary injunction.

In view of the fact that the writ petition is pending before this Court in respect of the title over the petition schedule property and there is a dispute with regard to title between the parties in the suit, in the light of the documents filed by the plaintiff holding that he is having prima-facie case and balance of convenience, *status quo* is ordered until disposal of the suit O.S.No.67 of 2012 before the trial Court.

In view of the above facts and circumstances of the case, the parties are directed to maintain *status quo* with regard to possession over the suit schedule land till disposal of the suit. The trial Court is directed to dispose of the suit O.S.No.67 of 2012 expeditiously.

With the above observation, this Civil Revision Petition is disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

10.08.2018.
Msr



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