

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.3828 of 2018

ORDER:

1) Assailing the order passed in C.M.A.No.11 of 2018 on the file of the Special Judge for Trial of Cases under SC & ST (POA) Act-cum-Additional District Judge, East Godavari at Rajahmundry, the present C.R.P. came to be filed under Article 227 of the Constitution of India.

2) For the sake of convenience, the parties hereinafter will be referred to, as arrayed in O.S.No.69 of 2018.

3) It is to be noted here that the plaintiff (respondent herein) filed O.S.No.69 of 2018 seeking permanent injunction restraining the defendants (petitioners herein), their men, agents and successors in interest from dispossessing the plaintiff from the plaint schedule property in any manner whatsoever, which means that a simple injunction suit came to be filed seeking an injunction against the defendants from their interference. The averments in the plaint show that the marriage between the plaintiff and first defendant took place on 27.04.2011 and out of wedlock, they were blessed with two children. Defendants 2 and 3 are the parents of first defendant/husband and the fourth defendant is the

grandmother of the first defendant. After the marriage, both of them lived happily for some time in the ancestral property, which is the plaint schedule property. It is said that the defendants subjected the plaintiff to severe cruelty, sold away her property, misappropriated the sale consideration and started harassing to bring more dowry. It is said that the defendants conspired and filed criminal cases against the plaintiff to neck her out from the house. The averments in the plaint also show that the first defendant took away the children and went to some other place, while the other defendants were making efforts to sell away the plaint schedule property and dispossess the plaintiff. A paper publication came to be issued by the plaintiff, to which the fourth defendant got issued a reply making false allegations. The plaintiff submits that her Aadhar card, voter I.D., would show that she is residing in the schedule property. According to her, even summons in the divorce application were sent to her address, which is the plaint schedule property. Hence, it is urged that the defendants cannot forcibly dispossess her from the schedule property.

4) A written statement came to be filed by the fourth defendant disputing the averments made in the plaint. It is stated that she is the absolute owner of the property, which she inherited from her father and that she has every right to enjoy the same.

According to her, defendants 1 to 3 have no right over the plaint schedule property and they have been residing elsewhere. According to her, the plaintiff beat the fourth defendant indiscriminately, which lead to lodging of a complaint vide C.C.No.603 of 2017, under Section 324 read with 34 IPC. It was further stated that in the counter filed in I.A.No.123 of 2018 in O.S.No.69 of 2018, Exs.R-1 to R-14 were marked, which were requested to be treated as part and parcel of the written statement filed by the 4th defendant in the suit. It is also stated that a case in Cr.No.432 of 2017 was also registered against the plaintiff, when she attempted to kill the fourth defendant. It is further stated that the fourth defendant gifted the said property by way of a gift deed in favour of her grand-daughter by name Dungala Jaya on 02.02.2018 and said document was filed as a material document in I.A.No.123 of 2018 in O.S.No.69 of 2018. Having regard to all the above, it is pleaded that the plaintiff has no right over the property.

5) Before filing the written statement, I.A.No.123 of 2018 came to be filed seeking temporary injunction. After considering the rival arguments and the documents marked, the learned 4th Additional Junior Civil Judge, Rajahmundry rejected the relief of the injunction as sought for. Challenging the said order, the

plaintiff filed C.M.A.No.11 of 2018, which was allowed. The said reversing order is challenged before this Court under this C.R.P.

6) The main ground urged by the learned counsel for the revision petitioners/defendants is that the findings of the lower appellate court itself indicate that the fourth defendant is in possession of the property and as such the Court below erred in relying upon the Aadhar and Voter ID cards in holding it was the plaintiff who is in possession of the property. It was further urged that a perusal of the documents, more particularly the counter filed and the registration of crimes against the plaintiff, would show that both the plaintiff and first defendant were asked to leave the house by the police and as such it cannot be said that the plaintiff is in possession of the property.

7) On the other hand, the learned counsel for the respondent/plaintiff would contend that a person, who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. According to him, even the owner of the property can get back his possession only by resorting to due process of law. He placed reliance on a judgment in **Prataprai N.Kothari v. John Braganza**¹ in support of the same. He further relied upon another

¹ AIR 1999 SC 1666

judgment of the Hon'ble Supreme Court in **Premji Ratansey Shah and others v. Union of India and others**² to show that issuance of order of an injunction is absolutely a discretionary and equitable relief and in a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession and that the same cannot be granted for mere asking.

8) In view of the law laid down by the Apex Court, the counsel would contend that since the plaintiff is in possession of the property, the question of injuncting her from the said property would not arise. As seen from the record, in paragraph 15 of the order passed by the first appellate court it has been specifically held as under:-

"15. Even Ex.R-5 copy of gift settlement deed executed by R-4 in favour of her granddaughter namely Dungala Jaya reveals that R-4 settled the property after her death and settled to take possession of the property by the above Dungala Jaya after the death of R-4 herein. Thus, the donee Dungala Jaya is neither having present interest or possession and that apart the present suit is injunction simplicitor. Under the above circumstances, the present I.A. is not bad for non-joinder of above Dungala Jaya. Undisputedly petitioner and R-4 registered crimes against each other. Though the petitioner claimed the petition schedule property as that of joint family property, Ex.R-3 clearly reveals that R-4 and her sister got rights over the plaint schedule property on death of their father and the sister of R-4, in turn

² 1994(3) ALT 25

relinquished her share in favour of R-4. Thereby it is clear that R-4 is the absolute owner of the petition schedule property as on today."

9) Having held that the fourth respondent is absolute owner of the petition schedule property as on today and that R-4 and her sisters got right over the schedule property on the death of their father and that the sister of R-4 in turn relinquished her share in favour of R-4, set-aside the finding of the trial court basing on the voter card and Aadhar card, which reveals the address of the plaintiff as that of the plaint schedule property.

10) It is an undisputed fact that the plaintiff(wife) married the first defendant (husband) in the year 2011. Out of their wedlock, they begot two children and all of them lived happily till disputes arose between them during the years 2017 and 2018. Therefore, having the address of the plaint schedule property in the Aadhar card and in the voter card, cannot be taken as a circumstance to show that the plaintiff is residing in the said address even as on today. The address mentioned there would only show that she was living with him in the said address at the time of issuance of the said cards. Therefore, this circumstance by itself cannot be made the basis to say that the plaintiff is now residing in the said address. At this stage, it is also to be noted that the question of first defendant living in the said house appears to be improbable for the reason that a criminal case came to be registered against

the plaintiff for attempting to kill the fourth defendant. In respect of the said incident, a case in Cr.No.432 of 2017 of I Town Police Station came to be registered under Section 307 IPC. The incident in question is said to have taken place on 13.11.2017 at 9.30 a.m. The record also discloses that registration of Cr.No.359 of 2017 of I Town Police Station for the offence punishable under Section 324 read with 34 IPC against the plaintiff and her mother at the instance of defendants 3 and 4. In the said case, police investigated and filed a charge-sheet vide C.C.No.603 of 2017 against the plaintiff and her mother. Having regard to the circumstances stated above, a doubt arises as to whether really the plaintiff is in possession of the plaint schedule property. This circumstance gets further fortified by the averments in the para 8 of the counter to that effect that soon after the incident, the first defendant(husband) and the plaintiff(wife) were asked to leave the plaint schedule property forthwith, but though the first defendant left the house, the plaintiff did not leave or vacate the schedule property as she had an evil-eye over the property. Therefore, this circumstance of first defendant leaving the house and the plaintiff staying over there to get over the property does not lead to an inference that she is in possession over the property. Further, in Ex.P-1, which is a xerox copy of the petition in F.C.O.P.No.256 of 2017 filed for divorce, the address of the first

defendant was mentioned as Dr.No.4-1978, Satellite city, Hukumpeta panchayat, Rajamahendravaram. That being the position, the averment in para 9 of the petition that the respondents are trying to dispossess the petitioner from the petition schedule property appears to be improbable, since the first respondent has been residing in Hukumpet but not in the petition schedule property. The order of the trial court further indicates that no scrap of paper is placed on record by the plaintiff showing that the defendants 1 to 3 have any right over the property and that when the plaintiff failed to prove that the defendants 1 to 3 have any right over the schedule property, plaintiff being the wife of the first defendant cannot claim exclusive right of residence against the 4th defendant and D.Jaya, in whose favour the 4th defendant executed a settlement deed (Ex.R-5). From the above discussion, it is clear that there is absolutely no material on record to show that the plaintiff(wife) is in possession of the property as on the date of filing of the suit.

11) Accordingly, the Civil Revision Petition is allowed by setting aside the order of the lower appellate court in C.M.A. No.11 of 2018 on the file of the Special Judge for Trial of Cases under SC & ST (POA) Act-cum-Additional District Judge, East Godavari at Rajahmundry. There shall be no order as to costs. As a sequel to it,

miscellaneous petitions pending if any in this C.R.P. shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:28.08.2018

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