

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5116 of 2016

ORDER:

This Civil Revision Petition is filed aggrieved by the order, dated 17.11.2015, in C.M.A.No.94 of 2014 passed by the XXIV Additional Chief Judge, City Civil Court, Hyderabad, setting aside the order, dated 24.01.2014, in I.A.No.173 of 2013 in O.S.No.134 of 2013 passed by the I Senior Civil Judge, City Civil Court, Hyderabad.

2. The plaintiffs filed O.S.No.134 of 2013 to declare them as lawful owners of the suit schedule property, seeking a direction to the defendant to deliver vacant, peaceful and physical possession of the suit schedule property to the plaintiffs and also for award of mesne profits. Pending the suit, the plaintiffs filed I.A.No.173 of 2013 for temporary injunction restraining the defendant and her men from alienating the petition schedule property; and the learned I Senior Civil Judge, City Civil Court, Hyderabad, allowed the said interlocutory application by granting ad-interim injunction in favour of the plaintiffs on 24.01.2014. Against the said order, the legal representatives of the deceased defendant preferred C.M.A. No.94 of 2014.

3. After hearing both sides, the lower appellate Court, by the impugned order dated 17.11.2015, allowed the said C.M.A. by setting aside the order in I.A.No.173 of 2013. Aggrieved of the same, the plaintiffs filed the present Civil Revision Petition.

4. Learned counsel for the revision petitioners-plaintiffs submits that the impugned order of the lower appellate Court is contrary to law and weight of evidence. He further submits that the lower appellate Court failed to understand the significance and importance under Order XXXIX Rule 1 & 2 C.P.C. and misunderstood the facts and erred in allowing the appeal. The lower appellate Court failed to see that the revision petitioners got filed the comprehensive suit for declaration of title and recovery of possession by filing the registered Sale Deed and they have established the *prima facie* case to go for trial. The lower appellate Court failed to assign proper reasons in reversing the reasoned order passed by the trial Court and also failed to see that the respondents have not at all filed any document to rebut the case of revision petitioners-plaintiffs. The lower appellate Court in the absence of any documentary evidence could not believe the version of the respondents-defendants. He finally stated that the impugned order is not sustainable and prayed the Court to allow the Civil Revision Petition by setting aside the

order in C.M.A.No.94 of 2014, dated 17.11.2015 and by restoring the trial Court's order granting temporary injunction pending the suit.

5. Learned counsel for the revision petitioners-plaintiffs reiterated the said contentions by drawing attention of the Court to exhibits P1 to P7 and the pleadings, whereas it is the submission of learned counsel for the respondents in supporting the order of the lower appellate Court in saying for this Court there is nothing to interfere by also drawing attention of the Court to the pleadings and observations.

6. Heard both sides on the respective rival contentions and perused the order of the trial Court and also the order of the lower appellate Court in deciding the revision.

7. Ex.P1 is the certified copy of the registered Sale Deed dated 24.01.1981 bearing document No.288/ 1981 in favour of the husband of plaintiff No.1-father of other plaintiffs 2 to 10 by name Shaik Ahmed for the property covered by the plaint schedule of a room with tin shed and passage admeasuring 18.6 square yards bearing premises No.5-6-409 situated near Dargah Yousufain Nampally, Hyderabad within the boundaries of North and West of respective other premises with door Nos.5-6-408 & 5-6-410 and South and East of passages of 6 feet width and 7 feet width respectively. The plaintiffs' claim

is that pursuant to the Sale Deed the vendee-husband of plaintiff No.1 supra, since died on 24.02.2000, was put in possession and continued in possession and after that the plaintiffs having obtained electrical connection by paying electrical bills and enjoying by saying there was a big tree therein that was fell down on 30.12.2000, from which the roof of the suit schedule property was collapsed, from which they are constrained to shift their residence to nearby rented house in F.G.Nagar, Vijay Nagar Colony, Hyderabad and taking advantage of it the defendants are trying to encroach into it and plaintiff No.2 was even beaten by the defendants and he was admitted in the Osmania General Hospital, Hyderabad, as an inpatient for two days. Defendant No.1 filed O.S.No.2622 of 2003 on the file of III Junior Civil Judge, City Civil Court, Hyderabad, against plaintiff No.2 for perpetual injunction in respect of the premises bearing door No.5-6-410 situated at Subhanpura, Dargah Yousufain, Nampally Mandal, Hyderabad, where plaintiff No.2 herein filed the written statement and contested. Against the decree and judgment therein dated 22.06.2005, an appeal in A.S.No.514 of 2006 was filed and the same was since dismissed on 02.08.2007, plaintiff No.2 filed S.A.No.1092 of 2009 before the High Court, which is admitted and pending for disposal in the High Court. Further, defendant No.1 filed O.S.No.698 of 2005 for perpetual injunction and the

same was dismissed for default on 28.04.2006 and even that door No.5-6-410 covered by the decree in O.S.No.2622 of 2003 the subject matter of Second Appeal supra is not that of the defendants, but they illegally occupied. The contest of the defendant is that the plaintiffs never in possession of the suit property bearing door No.5-6-409 and they are no way concerned with it and that the property number is not even in existence and she beseech the Court, that the plaintiffs have no *prima facie* case or balance of convenience and no way suffer irreparable loss and injury for the trial Court to grant injunction and it is an intention to get some order for subject door No.5-6-409 and to interfere and grab, if possible, the property of defendant with door No.5-6-410, apart from the suit claim is otherwise barred by limitation and not maintainable. The trial Court with reference to the Sale Deed, the copies of the plaint and written statement in O.S.No.2622 of 2003, the copy of judgment in O.S.No.698 of 2005, electricity bills, the identity card of Shaik Ahmed issued by the Election Commission of India and the market value certificate referred as exhibits P1 to P7 placed reliance by the plaintiffs, even for the reasons better known not filed either the judgment copy in O.S.No.2622 of 2003 or the confirmed appellate judgment therein or even the grounds of the Second Appeal, said to have been filed by plaintiff No.2 against the

defendant herein, for the reasons better known. No doubt, that decree and judgment, which is the subject matter of Second Appeal, is for door No.5-6-410, whereas the claim in the suit property is for door No.5-6-409. What the trial Court observed in granting injunction is that from Ex.P.1-Sale Deed supra the property stands in the name of the husband of plaintiff No.1 and Ex.P5 claimed as electricity bills in relation to the property and Ex.P6 is the identity card of Shaik Ahmed and plaintiff No.2 obtained from the Election Commission of India, which show *prima facie* case to grant injunction. The lower appellate Court's observation in allowing the appeal in reversing and setting aside the trial Court's injunction order is that the issue is whether there is any existence of door No.5-6-409 and if not in existence, whether the suit claim for that non-existence door number is with intent to claim for the property with door No.5-6-410, which is the subject matter of decree in favour of the defendant in O.S.No.2622 of 2003, confirmed in the appeal and pending in the Second Appeal. Once the plaintiffs have to establish the *prima facie* case from that dispute about its existence from mere Ex.P1 placed reliance on basis to show title, if at all such property is in existence and not any acts of possession, the granting of injunction by the lower Court is unsustainable.

8. Now coming to the revision, there is no scrap of paper regarding the payment of property tax and even from the existence of door No.5-6-409 in dispute by the defendant in the claim made by the plaintiffs, the plaintiffs did not file any property assessment and property tax with that door number and when possession is *prima facie*, the requirement to the entitlement of injunction pending disposal of the suit and such injunction will be co-terminus and no way influence the Court in deciding the suit ultimately, when the plaintiffs could not establish the acts of possession by showing any documentary evidence, that too in showing way back in 2000 the so-called shed covered by the Sale Deed in the name of the husband of plaintiff No.1 was collapsed and they shifted their residence to the nearby rented place and not residing in that property. It cannot be said there are any acts of possession nor there is any presumption of possession from title in the absence of showing existence of such door number covered by the property to the grant of temporary injunction.

9. Having regard to the above, there is nothing to interfere with the impugned order of the lower appellate Court, but for to say none of the observations will influence the mind of the trial Court in deciding the suit ultimately, and as the suit is of the year 2013 the trial Court shall make necessary endeavor

for early disposal of the suit preferably within a period of six (6) months from the date of receipt of a copy of this order.

With the above observations, this Civil Revision Petition is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

08.02.2018
MVA

