

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4987 OF 2017

ORDER:

The present Civil Revision Petition is filed challenging the Order, dated 23.03.2017, in C.M.A.No.5 of 2015, passed by the learned Judge, Family Court, Anantapuramu, whereunder the Order, dated 24.11.2014, in I.A.No.269 of 2014 in O.S.No.90 of 2014, passed by the learned Principal Junior Civil Judge, Anantapuramu, was set aside.

2. The facts, in narrow compass, are that the petitioner-plaintiff based on a registered sale deed dated 11.05.1951, filed a suit seeking injunction against the respondents-defendants, who are his first cousins. The claim of the petitioner is that the subject property was purchased in his favour, considering his physical disability, by his paternal uncle and his name has been mutated in the revenue records and pattadar pass books and title deeds have also been issued in his favour. According to him, though he has been in possession and enjoyment of the suit schedule property, the respondents are interfering with the same. In those circumstances, he also filed Interlocutory Application seeking temporary injunction.

3. In the written statement filed by the 2nd respondent in the suit, which was adopted by the other respondents, in Para 7, it was stated that under a Registered Partition Deed, dated 11.08.1982, partition was effected among the parties with respect to all the joint family properties, including the suit schedule property. As a matter of fact, the suit schedule property was

divided among the parties by metes and bounds and both the parties are enjoying their respective shares. It is further averred in the Written Statement that taking advantage of the non-mentioning of the survey number, the petitioner-plaintiff filed the present suit to knock away their property.

4. Considered the material on record. There was no oral evidence adduced before the lower Court in the Interlocutory Application. Based on the documentary evidence, the trial Court allowed the said Application granting temporary injunction, particularly, relying on the principle 'possession follows title unless the contrary is proved'. The Appellate Court reversed the orders of the trial Court without there being any finding given with respect to the possession and further with a strange observation that the petitioner-plaintiff has failed to prove the *prima facie* case in his favour.

5. As can be seen from the material on record, there is no dispute that the Registered Sale Deed, dated 11.05.1951, stands in the name of the petitioner, which gives a *prima facie* evidence of title in his favour. Coupled with the same, there is a specific pleading to the effect that the entries in the revenue records also stand in the name of the petitioner-plaintiff and there is no denial of the same. It is well-settled that with respect to the open site, unless the contrary is proved, the possession follows title. There is no other evidence, which has been brought before the Court below, except the pleading to the effect that the subject suit schedule land was partitioned among the parties under Ex.R.1-Partition deed. However, even in the written statement, it is admitted by the

respondents that there was no mention about the survey number of the suit schedule property. If the parties, on their own, in 1982 itself, had chosen to reduce the partition into writing, omission of survey number of the property purchased under the Registered Sale Deed, dated 11.05.1951, in the partition deed dated 11.08.1982, cannot be presumed, at this stage, as an accidental omission. Except the pleading made relying on the partition deed, there is no other material worth-mentioning that was brought before the Appellate Court to reverse the finding of the trial Court.

6. In those circumstances, since the order under Revision was made based on no material, the same is liable to be set aside and the order of the trial Court in I.A.No.269 of 2014 in O.S.No.90 of 2014 is restored. As the suit is of the year 2014, the court shall make an endeavour to dispose of the same as expeditiously as possible, at any rate within a period of one year.

7. Accordingly, the Civil Revision Petition is allowed and the order, dated 23.03.2017 in C.M.A. No.5 of 2015, is set aside. No costs.

8. Consequently, Miscellaneous Petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated:19.01.2018.

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