

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5144 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, questioning the order in C.M.A.No.3 of 2015 in I.A.No.142 of 2015 in O.S.No.19 of 2015 dated 20.02.2018 passed by the V Additional District Judge, Rayachoty, Kadapa District, wherein, C.M.A.No.3 of 2015 was dismissed by the Appellate Court, confirming the order in I.A.No.142 of 2015 passed by the Principal Junior Civil Judge, Rayachoty.

Originally one Yepuri Narasimhulu being lawful owner, sold suit schedule extent of Ac.0.40 cents in Sy.No.2103/4 of T. Sundupali Village to the petitioner namely Narayana on 16.07.2017 through a registered sale deed and he was inducted into possession of suit schedule land and while enjoying the same with absolute rights, he sold the same to his son namely Ramachandra i.e, the petitioner herein on 18.11.2008 and the petitioner was inducted into possession of the said land. While so, the respondent filed counter before the Court below stating that DKT patta was granted in favour of one Yepuri Gandla Obulu under DKT Patta No.777/1966 for the purpose of agriculture.

On perusing the entire record, the Trial Court held that, the petition schedule property is a DKT Patta land which the petitioner purchased i.e. the petition schedule property from his vendor, who is his father on 18.11.2008. The Trial Court observed that, the petition

schedule property was assigned to Yepuri Gandla Obuvulu and also observed that attested copy of 10(1) did not contain the name of plaintiff, thus shown it as waste land, thereby, clear that petition schedule property as DKT Patta land. The Trial Court held that as the plaintiff did not approach the Court with clean hands, dismissed the petition. Thereupon, C.M.A.No.3 of 2015 was preferred before the V Additional District Judge, Rayachoty, Kadapa District and the Appellate Court affirmed the order passed by the Trial Court.

The main ground urged is that, when the land was assigned by granting DKT patta in favour of vendor of the father of plaintiff, unless the DKT patta is cancelled by following the procedure under Section 4 of A.P. Assigned Lands (Prohibition of Transfers) Act 1977, the respondent cannot dispossess this petitioner from peaceful enjoyment and his interference is illegal. It is contended that, both the Trial Court and the Appellate Court did not record any specific finding as to the right of the respondent to interfere with the peaceful possession and enjoyment of the property and committed an error. The admission made in the counter filed by the respondent as to purchase of the property by this petitioner from his father, who purchased the property from legal representatives of original beneficiary i.e. assignee of the land, no further proof is required to establish that he is in possession and enjoyment of the property and both Courts did not consider this aspect in proper perspective and prayed to dismiss the petition.

During hearing, learned counsel for the petitioner Sri G. Ramachandra Reddy reiterated the contentions urged before the Trial Court, Appellate Court and the grounds urged in the revision.

The main endeavour of the learned counsel for the petitioner is that, unless the DKT patta is cancelled/ granted in favour of the original assignee, the respondent is not entitled to interfere with the peaceful possession and enjoyment of the property. so far, no proceedings under Section 4 of A.P. Assigned Lands (Prohibition of Transfers) Act 1977, were initiated to cancel the patta. In the absence of any such proceedings, interference of the respondent is illegal and requested to grant temporary injunction, setting-aside the concurrent findings recorded by both the Appellate Court and Trial Court in C.M.A.No.3 of 2015 in I.A.No.142 of 2015 respectively.

As seen from the rival contentions, the land in dispute is an assigned land and the father of the petitioner purchased the property under registered sale deed from the legal representatives of the original assignee. In turn, he executed another sale deed in favour of this petitioner, conveying title of the property in favour of this petitioner and since 2008, the name of this petitioner was not mutated in the revenue records and no pattadar passbooks or title deeds were obtained under A.P. Rights in Land and Pattedar Passbooks Act, 1971 (for short 'the ROR Act').

Even assuming for a moment that this petitioner purchased the property under registered sale deed, unless he *prima facie* establishes that he is in possession and enjoyment of the property, as on the date of filing the suit, he is disentitled to claim relief of temporary injunction. the documents filed before this Court do not disclose that he is in possession of the property as on the date of filing suit and petition.

The relief under Order XXXIX Rules 1 & 2 is purely discretionary relief and to claim such discretionary relief, the petitioner must approach this Court with clean hands. The petitioner having purchased assigned land governed by A.P. Assigned Lands (Prohibition of Transfers) Act 1977, the petitioner is not entitled to claim such discretionary relief. Apart from that, the petitioner miserably failed to establish his possession and three ingredients, which are *sine qua non*, namely, *prima facie* case for grant of temporary injunction, balance of convenience and irreparable loss. In the absence of proof of the above, the concurrent fact findings recorded by the Trial Court and the Appellate Court cannot be reversed while exercising power under Article 227 of the Constitution of India.

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**¹ that under Article 227 of

¹ (34)2005 (3) ALT (CrL) 125 (SC)

Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

This Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

- a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.

In the present facts of the case, none of the grounds which permits the Court to exercise power under Article 227 of the Constitution of India are found. Therefore, in the absence of any manifest error, it is difficult to reverse the order passed by the Trial Court. In view of my foregoing discussion, I find no reason to set-aside the order passed by the Court below.

In view of my foregoing discussion, the petitioner is not entitled to any temporary injunction and consequently, the civil revision petition is liable to be dismissed.

Accordingly, the civil revision petition is dismissed.

However, the observations or findings recorded, if any, hereinabove with regard to the possession of the plaintiff will have no bearing on the suit and the Trial Court is at liberty to decide and dispose of the suit independently, uninfluenced by the observations or findings, if any recorded in this petition.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:07.09.2018

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