

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 5248 OF 2016**

**ORDER:**

This civil revision petition under Article 227 of the Constitution of India is filed challenging the decree and decretal order dated 01-06-2016 in C.M.A.No. 18 of 2015 on the file of the Court of IV Additional District Judge, Ranga Reddy District at L.B. Nagar (for short, 'the Court below').

2. The respondents-plaintiffs filed O.S.No. 42 of 2014 on the file of the Court of II Additional Junior Civil Judge, L.B. Nagar, R.R. District (for short, 'the trial Court'), for permanent injunction against the petitioner-defendant. The respondents filed I.A.No. 70 of 2014 in the abovementioned suit under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short, 'C.P.C.') for grant of *interim* injunction restraining the petitioner and his men from interfering with their peaceful possession and enjoyment of the property during pendency of the suit contending that one L.Gopal Reddy, who is husband of respondent No. 1 and father of respondent No. 2, was the owner of the property and during the lifetime of the said Gopal Reddy, he was in possession and enjoyment of the property and after his death, the respondents succeeded the property as legal-heirs and continuously in possession and enjoyment of the same. While so, the petitioner made an attempt to interfere with their peaceful possession and enjoyment of the property and therefore the respondents sought for perpetual injunction as stated above and also sought for *interim* injunction in the abovementioned interlocutory application.

3. The petitioner-defendant filed counter affidavit denying material allegations *inter alia* contending that L.Gopal Reddy executed a registered G.P.A. bearing document No. 795/1992 dated 10-07-1992 in his favour; that the

said L.Gopal Reddy agreed to sell the property under agreement of sale dated 10-07-1992 to him and he also paid consideration as agreed thereunder and that he filed O.S.No. 225 of 2014 for specific performance of agreement of sale dated 10-07-1992 and other consequential reliefs which is pending for adjudication on the file of the Court of Principal Senior Civil Judge, Ranga Reddy at L.B. Nagar. The petitioner also contended in his counter affidavit that the property was leased out to respondent No. 2 in the month of October, 2011, and therefore the possession of the latter is only as lessee and he paid the lease amount by cheque bearing No. 010625 drawn on IOB, Madhapur Branch, on 11-07-2012 and thereafter he refused to pay the lease amount and resorted to this litigation. It is also contended that prior to induction of respondent No. 2 in to possession as lessee, it was under the occupation of a third party from 2007 to 2011. Therefore, the petitioner claimed constructive possession of the property through the lessee-respondent No. 2 and finally prayed for dismissal of the petition.

4. During inquiry, no oral evidence is adduced on either side. However, Exs.P1 to P5 are marked on behalf of the respondents and Exs.R1 to R18 are marked on behalf of the petitioner. Upon hearing, the trial Court granted temporary injunction restraining the petitioner and his men from interfering with the peaceful possession and enjoyment of the respondents during pendency of the suit. Aggrieved thereby, the petitioner filed C.M.A.No. 18 of 2015 before the Court below. Considering the material on record, the Court below passed the impugned order. Feeling aggrieved by the impugned order, the present revision is filed.

5. During hearing, learned counsel for the petitioner would contend that the petitioner alone is in possession and enjoyment of the property and when the respondents are out of possession, they are disentitled to claim temporary

injunction during pendency of the suit under Order XXXIX Rules 1 and 2 of C.P.C. but the trial Court did not consider the documents produced along with the petition and committed an error in deciding the application in favour of the respondents and prayed to set aside the order.

6. Admittedly, father of respondent No. 2 and husband of respondent No. 1 is the owner of the property and he allegedly executed G.P.A. in favour of the petitioner. Thus, the petitioner is claiming to be a power of attorney holder of father of respondent No. 2 and husband of respondent No. 1. The power of attorney, which the petitioner has relied upon, is not an agency coupled with interest to fall within the ambit of Section 202 of Indian Contract Act, 1872, but he was authorized to sell and execute necessary documents in favour of third parties including Pitta Nagarathnamma. Moreover, O.S.No. 225 of 2014 is filed against the wife-respondent No.1, son-respondent No. 2 and daughter of Gopal Reddy seeking the following reliefs:

- "a) *To pass a decree for specific performance against the Defendants by directing the Defendants to execute the registered sale deed of suit Schedule property in favor of the Plaintiffs and in case of failure by the Defendants the Hon'ble Court may be pleased to execute the registered sale deed in favor of the Plaintiffs in the name of the Defendants.*
- b) *The defendants may be directed to deliver the possession of suit schedule property in favor of the Plaintiffs.*
- c) *If any other appropriate relief to which the Plaintiffs are entitled may be granted.*
- d) *To direct the Defendants to pay the cost of the suit."*

In para No. 5 of the plaint in O.S.No. 225 of 2014, the petitioner asserted that the property was leased out to respondent No. 2 on rent of Rs.86,000/- p.a. Therefore, from the relief claimed in the plaint, it is abundantly clear that the

petitioner is out of possession of the schedule property and claiming the relief of delivery of possession in O.S.No. 225 of 2014 itself suffice to conclude that the respondents are in possession and enjoyment of the property either as owners or lessees. When the respondents are in possession, the petitioner is not supposed to interfere with the possession of the respondents irrespective of their nature of possession.

7. In a suit for bare injunction, the Court is required to decide as to who is in possession of the property as on the date of filing of the suit and the title of the parties cannot be gone into except incidentally and the Court is not expected to record any specific finding on title. Moreover, the petitioner is only the alleged power of attorney holder and if the agreement in favour of Nagarathnamma is true, unless possession of the property is delivered, the petitioner is not entitled to claim any right. However, the petitioner contended that possession was delivered subsequently and leased out the property to respondent No. 2 but this contention is not based on any material. Learned counsel for the petitioner would draw the attention of this Court to the affidavit of respondent No. 1 issued to Pitta Nagarathnamma dated 18-05-1992 stating on oath that the sale transaction between her husband and Pitta Nagarathnamma was within her knowledge and that she has no claim over the suit schedule property. Taking advantage of it, it is contended that the possession is with the petitioner but the affidavit does not disclose delivery of possession of the property to the petitioner at any point of time. The claim of the petitioner is based on power of attorney, affidavit and agreement of sale in favour of Nagarathnamma. When Pitta Nagarathnamma allegedly purchased the property from this petitioner being the power of attorney holder of Gopal Reddy, the said Nagarathnamma would not get any interest or title to the property in view of Section 54 of the Transfer of

Property Act, 1882 (for short, 'the Act'), and she is not entitled to claim benefit under Section 53-A of the Act unless the petitioner establishes that there is an agreement of sale in writing and that possession of the property was delivered and ready and willing to perform his part of obligation. Here in this case, delivery of possession is not substantiated by any material though proved the other two ingredients. Such protection is available only in a suit filed for recovery of possession and not in a suit for perpetual injunction. Therefore, the petitioner is not entitled to claim benefit under Section 53-A of the Act in the present petition.

8. On overall consideration of the material on record, I find *prima facie* that the respondents are in possession of the property in view of the relief claimed by the petitioner in O.S.No. 225 of 2014 and they are entitled to claim temporary injunction since *prima facie* case is in their favour and they would sustain irreparable injury in case no injunction is granted and balance of convenience is also tilting in their favour being the legal-heirs of Gopal Reddy. Therefore, both the *fora* below did commit no error warranting interference of this Court exercising power under Article 227 of the Constitution of India. The revision petition is devoid of merits and the same is liable to be dismissed. However, it is made clear that the observations if any made against the petitioner will have no bearing on both the suits pending and the Courts below are directed to dispose of the suits uninfluenced by the observations made hereinabove.

9. Subject to the above observations and directions, the civil revision petition is dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

Date: 30-01-2018.

JSK

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**M.SATYANARAYANA MURTHY, J.**