

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.1699 OF 2018, W.A.No.1278 OF 2018
&
W.P.No.27538 OF 2018

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Vedula Venkata Ramana, learned Senior Counsel for petitioner in C.R.P.No.1699 of 2018 and appellant in W.A.No.1278 of 2018 and Mr.V.Ravi Kumar for respondent in C.R.P.No.1699 of 2018 and W.A.No.1278 of 2018 and petitioner in W.P.No.27538 of 2018.

The subject matter of these three cases is one and the same. The writ petition and the writ appeal are offshoot of the order in C.M.A.No.11 of 2017 on the file of the Senior Civil Judge, Huzarabad. C.R.P.No.1699 of 2018 is filed challenging the order of temporary injunction granted in C.M.A.No.11 of 2017.

For convenience, the parties are referred to as plaintiff and defendant. Respondent in C.R.P.No.1699 of 2018 filed O.S.No.187 of 2016 in the Court of the Junior Civil Judge at Huzurabad for perpetual injunction restraining the defendant/revision petitioner herein from interfering with plaintiff's possession enjoyment of plaint schedule property consisting of Acs.4-20 Gts in Sy.No.312 at Garepalli, Somaram Village of Venkapalli-Saidapur Mandal. The respondent filed I.A.No.729 of 2016 for temporary injunction pending suit. The case of respondent/plaintiff as averred in the plaint is:

That plaintiff is the pattadar and possessor of land an extent of Acs. 8-36 Gts in Sy.No.312 of Garrepally of Somaram Village of

Venkepalli Village of Saidapur Mandal; that the said extent was originally owned by his father; that according to decree in O.S.No.334 of 1967 on the file of the District Munsif, Huzurabad, the extent, referred above, in Sy.No.312 was allotted to the plaintiff; that the subject matter of suit is an extent of Acs.4-20 Gts; that plaintiff mortgaged the property to LSCS Limited, Saidapur on 02.04.1991 and on 27.08.2012 released it and since then he is in constructive possession; that the defendant, who is his elder brother's son, in collusion with his father by creating bogus documents, is trying to occupy the suit schedule property and got entered his name in the revenue records; that plaintiff on coming to know of the same filed appeal before the Revenue Divisional Officer Kariminagar for rectification of wrong entries and the appeal is pending; that plaintiff sold an extent of Acs. 2-00 to one Gadde Kanakaiah and also sold Acs.0-30 Gts to one Lasmaiah. The plaintiff raised cotton crop and the defendant has no right or interest in the suit schedule property.

On the other hand, the revision petitioner/defendant denied the material averments in the plaint and further relied as follows:

That O.S.No.334 of 1967 was filed seeking declaration of title in respect of some lands shown in the schedules therein on wrong advise though the said lands are joint family property; that all the undivided joint family lands are shown in the schedule of the said suit and the decree in respect of joint family lands is not valid under law; that the decree dated 28.07.1967 in O.S.No.334 of 1967 was nominal and not acted by the parties and they continue in joint possession of the lands shown in the said suit even after the decree; that the plaintiff after selling the extents mentioned in the plaint is left with only Acs.1-30 Gts

of land and he had falsely filed the suit in respect of Acs. 04-20 Gts of land; that after partition of the joint family properties, plaintiff, father of defendant and another brother of plaintiff by name Damodhar Reddy decided to further partition their shares and accordingly, plaintiff was allotted Acs. 04-20 Gts in Sy.No.312 along with other lands and the remaining Acs.4-16 in Sy.No. 312 was allotted to Damodhar Reddy and since then they are in continued and separate possession of the lands; that the name of plaintiff was entered in revenue record to extent of Acs.4-20 Gts in Sy.No.312 and so also other lands; that plaintiff was issued passbook in respect of the above extent and not Acs. 8-36 Gts; that plaintiff is presently in possession of Acs. 01-30 Gts but not Acs. 04-20 Gts in Sy.No.312; that plaintiff filed the present suit with a *mala fide* intention in respect of Acs. 04-20 Gts in Sy.No.312 giving the boundaries which pertain to land an extent of Acs. 04-16 Gts, purchased by defendant; and that defendant is in peaceful possession and enjoyment of Acs. 04-16 Gts in Sy.No.312 with the boundaries shown in the suit schedule.

The trial Court considered *prima facie* case, balance of convenience and irreparable injury while deciding whether the plaintiff is entitled for temporary injunction or not and found that the plaintiff is not entitled for temporary injunction and accordingly dismissed I.A.No.729 of 2016. The plaintiff filed C.M.A.No.11 of 2017 against the order in I.A.No.729 of 2016 dated 01.06.2017. On 09.02.2018, the appellate Court allowed C.M.A.No.11 of 2017. Hence, the revision.

During the pendency of the revision, the plaintiff filed W.P.No.27538 of 2018 for a direction to give police protection pursuant to and in terms of the order dated 09.02.2018 in C.M.A.No.11 of 2017. The learned Single Judge on 13.08.2018 granted interim direction. Hence, W.A.No.1278 of 2018 is at the instance of defendant. On 25.09.2018, this Court has suspended the order granting police protection to plaintiff. In the above circumstances, the counsel consent to considering and disposing of the revision and the result therein would have bearing on the writ petition and the writ appeal as well.

Mr.Vedula Venkata Ramana, by reading the averments in the plaint, contends that the plaint is presented without cause of action, the plaint is silent on exclusive or actual possession enjoyed by the plaintiff, how and when the plaintiff has got exclusive title to suit schedule property which is in an extent of Acs.04-20 gts in Sy.No.312. Neither there is a plea of exclusive possession nor a finding recorded by the appellate Court while granting temporary injunction. He reads each one of the paragraphs in the order under revision and contends that temporary injunction could be granted; firstly a finding on possession vis-à-vis plaint schedule is considered, recorded and further it is found that the plaintiff is in exclusive possession of plaint schedule and there is threat of interference to such possession at the hands of defendants. He further contends that *prima facie* finding recorded cannot also be understood as conforming to the documents relied on by both the parties. Non-consideration of all the above circumstances warrants setting aside the order under revision.

Mr.Vedula Venkata Ramana further contends with force that the weakness of defendant is no yardstick for deciding any one of the requirements i.e., *prima facie* case, balance of convenience and irreparable injury in an application for grant of temporary injunction. It is not the weakness of defendant that is determinative but the *prima facie* case i.e., exclusive possession in the case on hand, balance of convenience etc., are for the limited purpose of granting temporary injunction must be pleaded and proved.

Mr.Ravi Kumar contends that the plaintiff derived title through decree and judgment in earlier round of litigation. The other exhibits evidence the enjoyment of plaintiff schedule by plaintiff and as absolute owner he sold a portion of land in Acs.8-36 Gts in Sy.No.312. He relies on the *prima facie* finding recorded thus:

“Moreover the suit property is under registered mortgage and under the control of LSCS since 1991 to 2012 and the said LSCS Limited itself released the land through registered release deed in the year 2012. In such a case how the said simple partition deeds can become valid documents for acquiring properties. Moreover the respondent/defendant herein is claiming rights over the suit properties which are registered through unregistered GPA Holder, wherein unregistered GPA Holder cannot acquire any right to sale the property without getting the said GPA Registered by the original owner. Hence the respondent/defendant cannot acquire any right over the property purchased through unregistered GPA Holder. However, the original facts will be decided at the time of trial. In the present case if the injunction is not granted there is every likelihood of dispossessing of the petitioner/plaintiff from the suit property under guise of a registered sale deed executed by unregistered GPA Holder. Hence *prima facie* case and balance of convenience are in favour of petitioner/plaintiff and if the respondent is not curtailed by allowing this petition then the petitioner/plaintiff may suffer irreparable loss.”

and contends that once *prima facie* case is accepted, possession follows that *prima facie* case is pleaded and, therefore, he prays for dismissing the revision.

We have perused the order under appeal. The entitlement of a plaintiff for temporary injunction is dependant on the principles of *prima facie* case, balance of convenience and irreparable loss. The application of these three principles is dependant on the facts and circumstances as stated by the parties and the proof of such averments. The Court grants the relief of temporary injunction protecting the possession of plaintiff from interference by the defendant, or men, agents etc. The possession claimed by plaintiff is considered and decided while disposing of an application filed for temporary injunction. *Prima facie* case in the case on hand is about determining possession claimed by the plaintiff. The paraphrasing of requirements viz., (1) whether the petitioners have made out a *prima facie* case (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if the injunction is not granted than the inconvenience which the opposite party would be put to if the temporary injunction is granted and (3) whether the petitioners would suffer irreparable injury in the order would not be sufficient to conclude that there is application of mind. Further the first condition is *sine qua non*, at least two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle them to obtain a temporary injunction in their favour and does not relieve the Court of exercising its discretion lawfully. The exercise of discretion can be said to be lawful if the facts

pleaded and proved are applied to these requirements and a finding for the purpose of disposing of I.A is recorded. The order under revision, we are of the view, does not appreciate the facts in issue between the parties, much less recorded findings on *prima facie* case on which strong reliance is placed by Mr.Ravi Kumar. The learned counsel, keeping in view the nature of contest between the parties, have agreed to sending the matter back to the appellate Court for consideration afresh in accordance with law. Therefore, without examining even the findings recorded by the appellate Court on *prima facie* case, we are satisfied the order under revision can be set aside, matter remitted to the Senior Civil Judge, Huzurabad for consideration and disposal in accordance with law.

The civil revision petition is allowed. The order under revision is, accordingly, set aside. C.M.A is restored to file. The Appellate Court considers and disposes of C.M.A in accordance with law and facts and circumstances of the case within four weeks from the date of receipt of copy of this order.

The writ petition and writ appeal are closed as no further orders are necessary. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

12th November, 2018
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