

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5961 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 22.06.2018 passed in C.M.A.No.6 of 2017 on the file of the Court of II Additional District Judge, Nalgonda at Suryapet, wherein and whereby the order dated 11.08.2017 passed in I.A.No.483 of 2016 in O.S.No.192 of 2016 on the file of the Court of the Senior Civil Judge at Suryapet, granting interim injunction in favour of the petitioner-plaintiff, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. It is the case of the petitioner that he is the absolute owner and possessor of the land in Survey No.362/E to an extent of Ac.0.34 ½ guntas, in Survey No.362/U to an extent of Ac.0.34 ½ guntas and in Survey No.362/Uu to an extent of Ac.0.34 ½ guntas i.e., total Ac.2.23 ½ guntas situated in Jajireddygudem Revenue Village. The father of the petitioner got the suit schedule property from his ancestors; ever since he has been in possession and enjoyment of the suit schedule property. The father of the petitioner executed a gift deed dated 04.05.2016 in favour of the petitioner bequeathing the suit schedule property. The concerned Revenue Officials issued pattadar passbook in favour of the petitioner. The respondent demanded the petitioner to sell the suit schedule property for which he refused. On 13.11.2016 the

respondent made an attempt to interfere with the suit schedule property. *Prima facie* case and balance of convenience are in favour of the petitioner. Having no other alternative, the petitioner filed the suit for perpetual injunction. The petitioner filed I.A.No.483 of 2016, under Order XXXIX Rules 1 and 2 C.P.C., seeking temporary injunction. Hence, the petition.

4. The respondent filed a memo requesting the Court to consider the averments made in the written statement filed by him in I.A.No.483 of 2016.

5. It is the case of the respondent that the father of the petitioner by name Pichaiah along with the petitioner and his family members have agreed to sell the suit schedule property in favour of the respondent at the rate of Rs.1,80,000/- per acre. The respondent paid an amount of Rs.2,00,000/- as advance consideration on 09.08.2009 and obtained agreement of sale. The respondent paid an amount of Rs.2,10,000/- to the father of the petitioner on 09.10.2010 and also paid an amount of Rs.50,000/- on 02.05.2012 to the mother and brother of the petitioner. The respondent paid an amount of Rs.4,60,000/- towards sale consideration. The respondent himself measured the land, which came to Ac.2.23 guntas. The father of petitioner, without executing a regular sale deed in favour of the respondent, registered gift deed in favour of the petitioner and got mutated the property in favour of the petitioner. Basing on the complaint lodged by the respondent, the concerned Station House Officer registered a case in Crime No.207 of 2016 against the petitioner

and others for the offences punishable under Sections 420 and 506 read with 34 I.P.C. Hence, the suit is liable to be dismissed.

6. To substantiate the case, on behalf of the petitioner, Exs.P.1 to P.11 were marked. To demolish the case of the petitioner, on behalf of the respondent, Exs.R.1 to R.5 were marked.

7. Basing on the documentary evidence and other material available on record, the trial Court arrived at a *prima facie* conclusion that the petitioner has been in possession and enjoyment of the suit schedule property, more particularly, as on the date of filing of the suit and granted interim injunction in his favour.

8. Feeling aggrieved by the order of the trial Court dated 11.08.2017 passed in I.A.No.483 of 2016 in O.S.No.192 of 2016, the respondent-defendant preferred C.M.A.No.6 of 2017 on the file of the Court of II Additional District Judge, Nalgonda at Suryapet. During pendency of the appeal, the respondent filed a petition to receive the additional documents and the same was allowed. Ex.R.6 was marked during pendency of the appeal. The first appellate Court, after reappraising the documentary evidence and other material available on record, arrived at an independent conclusion that the petitioner *prima facie* established that he has been in possession and enjoyment of the suit schedule property and dismissed the appeal. Hence, this revision is filed by the respondent-defendant.

9. Heard the learned counsel for the respondent (petitioner) and perused the material available on record.

10. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

11. The predominant contention of the learned counsel for the respondent-defendant (petitioner herein) is that the trial Court has not properly considered Exs.R.1 and R.4 and passed the impugned order. He further submitted that the first appellate Court has not properly considered Exs.R.1, R.4 and R.6 and dismissed the appeal on untenable grounds.

12. As per the averments made in the written statement, the father of the petitioner is the absolute owner of the suit schedule property. It is the case of the respondent that the father of the petitioner executed an agreement of sale in his favour in respect of the suit schedule property. Ex.R.1 is the agreement of sale dated 09.08.2009. Ex.R.2 is the receipts dated 09.10.2010 and 02.05.2012. Ex.R.3 is the certified copy of F.I.R. Ex.R.4 is the letter dated 07.04.2017 addressed by the Mandal Revenue Officer, Jajireddygudem, to the Station House Officer, Aravapally. Ex.R.5 is the charge sheet.

13. It is a settled principle of law that a person, who approaches the Court, seeking equitable relief, has to come to the Court with clean hands. Establishment of *prima facie* case, balance of convenience and irreparable loss likely to be caused to the petitioner is *sine qua non* to grant interim injunction under Order XIII Rule 1 C.P.C. In order to prove the possession, the respondent mainly placed reliance on Exs.R.1, R.4 and R.5.

14. Even as per the case of the respondent, the father of the petitioner is the absolute owner of the suit schedule property. Ex.P.4 is the certified copy of gift settlement deed dated 04.05.2016 executed in favour of the petitioner by his father in respect of the suit schedule property. It is the contention of the respondent that the father of the petitioner executed a gift settlement deed-Ex.P.4 in favour of the petitioner with an ulterior motive to deprive his legal rights. Whether Ex.P.4 is a genuine one or not will be decided at the time of full-fledged trial. It is needless to say that the Court shall not express any opinion with regard to validity or otherwise of the documents while deciding the interlocutory application. As per the recitals of Exs.P.1 to P.3-Pahanies, the father's name of the petitioner is shown as pattadar and possessor of the suit schedule property. A perusal of Ex.P.5 reveals that the name of the petitioner is mutated in the revenue records on 23.07.2016. As per the recitals of Ex.P.7-titled deed and Ex.P.8-pattadar passbook, the petitioner is in possession of the suit schedule property. As per the recitals of Exs.P.10 and 11-Pahanies, the petitioner is in possession of the suit schedule property. A perusal of the above documents *prima facie* reveals that the petitioner has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit.

15. Learned counsel for the respondent (petitioner herein) strenuously submitted that the respondent came into possession of the suit schedule property in pursuance of Ex.R.1-agreement of sale and Ex.R.2-receipts. This Court carefully perused Exs.R.1

and R.2. There is no mention in Exs.R.1 and R.2 that the father of the petitioner delivered the suit schedule property in favour of the respondent either on 09.08.2009 or 02.05.2012. Exs.R.1 and R.2 are no way helpful to substantiate the stand of respondent. Ex.R.4 is the letter addressed by the Mandal Revenue Officer, Jajireddygudem, to the Station House Officer, Aravapally, on 07.04.2017. There is no mention in Ex.R.4 that in pahanies, the name of the respondent is shown in the possession column. Basing on the complaint lodged by the respondent, the concerned Station House Officer registered a case in Crime No.207 of 2016 against the petitioner and others for the offences punishable under Sections 420 and 506 read with 34 I.P.C. These two documents are no way helpful to the respondent to establish that the father of the petitioner delivered the suit schedule property in his favour. Mere registration of the criminal case that itself is not a valid ground to arrive at a conclusion that the respondent has been in possession and enjoyment of the suit schedule property. The trial Court considered the documentary evidence available on record and arrived at a conclusion that the petitioner satisfied the ingredients of Order XXXIX Rules 1 and 2 C.P.C. and granted interim injunction. The first appellate Court, after reappraising the documentary evidence and other material available on record, arrived at a *prima facie* conclusion that the petitioner has been in possession and enjoyment of the suit schedule property as on the date of filing of the suit. At the time of arguments, learned counsel for the respondent (petitioner herein) submitted that the respondent filed O.S.No.94 of 2017 against the father of the petitioner and the petitioner for specific performance of agreement

of sale. Whether the respondent is entitled for the relief of specific performance or not will be decided after full-fledged trial. The documents produced by the petitioner *prima facie* reveal that he has been in possession and enjoyment of the suit schedule property. The balance of convenience is also in favour of the petitioner. If no injunction is granted in favour of the petitioner, it may cause untold hardship to the petitioner when compared to the respondent. The findings recorded by the Courts below are supported by documents available on record. The Courts below have assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Courts below. This Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below, unless there is an error apparent on the face of the record. There is no illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India.

16. In the result, the Civil Revision Petition is dismissed. However, the observations, if any, made by this Court are confined to this revision petition only. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 01.11.2018
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