

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.6079 of 2018

ORDER:

This Revision is filed by the petitioners assailing the order dt.05-10-2018 in C.M.A.No.5 of 2017 of the XII Additional District Judge, Pithapuram reversing the order dt.04-01-2017 in I.A.No.1219 of 2016 in O.S.No.181 of 2016 of the Senior Civil Judge, Pithapuram.

2. Petitioners are defendants in the above suit.
3. The respondents filed the said suit for perpetual injunction against the petitioners restraining the petitioners from interfering with their possession and enjoyment of the plaint schedule property.
4. The respondents also filed I.A.No.1219 of 2016 under Order XXXIX Rule 1 and 2 C.P.C. to grant temporary injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the plaint schedule property pending suit.
5. According to respondents, originally item Nos.1 and 2 of the plaint schedule were purchased by late Satyanarayana Raju, father of 1st petitioner and 1st petitioner under registered sale deed dt.11-07-1997; that they then executed two registered gift deeds Exs.A-1 and A-2 dt.01-06-2007 gifting both items of property to late Venkatapathiraju, husband of 1st respondent and father of 2nd respondent; and thereafter the said Venkatapathiraju was in possession of the said property.

6. Respondents contended that due to some disputes, the said Venkatapathiraju executed Exs.A-3 and A-4 registered sale deeds nominally in favour of his sister i.e., the 2nd defendant/2nd petitioner and the 2nd petitioner did not get any right, title or interest over the plaint schedule property and she also did not accept the gift deeds. It is also contended that the 2nd petitioner voluntarily gave Ex.A-5 notarized affidavit stating that she will not get rights over item Nos.1 and 2 on 15-12-2008. Respondents contend that late Venkatapathiraju executed Ex.A-6 unregistered Will dt.02-05-2016 bequeathing the plaint schedule property by giving life interest to the 1st respondent and vested remainder to 2nd respondent. He later died on 12-07-2016 due to cardiac trouble and after his demise, the plaint schedule property devolved on respondents and they are enjoying the same with absolute rights. They contend that since the petitioners are openly proclaiming that they would trespass into the plaint schedule property, they filed the suit.

7. The 2nd petitioner filed a written statement, which was adopted by 1st petitioner, denying the contentions of the respondents. They contended that 1st respondent is not the legally wedded wife of late Venkatapathiraju and she should specifically prove that they gave birth to the 2nd respondent though the said Venkatapathiraju. According to them, Venkatapathiraju's legally wedded wife is one Atike Satya. The 2nd petitioner stated that after the registered gift settlement deeds dt.15-12-2008 were executed in her favour through Exs.A-3 and A-4

by the said Venkatapathiraju, she is in possession of the said items and she did not execute notarized affidavit Ex.A-5. According to her, it is a forged and fabricated document, and the Will is also forged and fabricated document.

8. Similar stands were taken by both parties in I.A.No.1219 of 2016 and in the counter-affidavits filed thereto.

9. In the said I.A., respondents/plaintiffs marked Exs.A-1 to A-15 and petitioners /defendants marked Exs.B-1 to B-17.

10. By order dt.04-01-2017, the trial Court dismissed the said I.A. holding that the respondents were not entitled to grant of temporary injunction pending suit. It referred to the contentions of the parties, and held that it finds force in the contentions of the petitioners/defendants and respondents are estopped from contending that Ex.A-5 was executed by 2nd petitioner with the intention as stated by them since 2nd petitioner denied execution of the same. It also relied on the circumstance that pattadar pass books and title deeds were issued in favour of the respondents. It also held that the originals of Exs.A-3 and A-4 gift settlement deeds were stolen by respondents and payment of land revenue by petitioners as well as Form-1B ROR issued through Ex.B-15 and Adangals issued subsequently as Exs.B-16 and B-17 prove the possession of petitioners.

11. Challenging the same, respondents/plaintiffs filed C.M.A.No.5 of 2017 before the XII Additional District Judge, Pithapuram.

12. The lower appellate Court allowed the said appeal and set aside the order dt.04-01-2017 in I.A.No.1219 of 2016 in O.S.No.181 of 2016 and granted temporary injunction in favour of the respondents and against the petitioners. It stated that *prima facie* Ex.A-5 shows that it was executed by 2nd petitioner stating that Exs.A-3 and A-4 are nominal, that they were never acted upon, and that the possession was also not delivered on the date of execution of Ex.A-5 in 2008 and so the respondents alone were in possession of the plaint schedule property. It also took note of the fact that the originals of Exs.A-3 and A-4 were not in the custody of the defendants and Ex.A-7 adangals issued for Fasli 1426 showed that Venkatapathiraju alone was the pattadar and possessor of the land and these circumstances probablise Exs.A-3 and A-4 being nominal. It also disagreed with the contention of the defendants that Atike Satya was the legally wedded wife of Venkatapathiraju and held that she was only kept mistress of the said Venkatapathiraju. It also discussed the other material on record and then allowed the C.M.A.

13. Challenging the same, this Revision is filed.

14. Learned counsel for petitioners/defendants contended that the findings recorded by the lower appellate Court are not correct and the lower appellate Court ought not to have relied on the notarized affidavit as well as circumstance of the originals of the documents Exs.A-3 and A-4 not being with petitioners since according to petitioners, the notarized affidavit is a forgery and it is the contention

of the petitioners that Exs.A-3 and A-4 were in fact stolen by respondents.

15. Learned counsel for plaintiffs/respondents supported the findings of the lower appellate Court.

16. I have noted the contentions of both sides.

17. The jurisdiction under Article 227 of the Constitution of India is circumscribed and the Court exercising revisional jurisdiction cannot act as an appellate Forum and interfere with findings of questions of fact. There is no perversity or non-appreciation of material evidence by the lower appellate Court warranting interference by this Court under Article 227 of the Constitution of India.

18. In this view of the matter, I am of the opinion that no case has been made out for interference by this Court with the order dt.05-10-2018 in C.M.A.No.5 of 2018 of the lower appellate Court. Therefore, the Civil Revision Petition is dismissed.

19. However, the trial Court is directed to decide the suit as expeditiously as possible uninfluenced by the findings of either the trial Court or lower appellate Court strictly in accordance with law. No costs.

20. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

Date : 08-11-2018
Vsv