

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6225 OF 2016

ORDER:

This civil revision petition is filed by the defendants, under Article 227 of the Constitution of India, assailing the order dated 15.9.2016 passed in C.M.A. No.19 of 2015 on the file of the Court of Special Judge for trial of Cases under SCs & STs (PoA) Act-cum-Additional District Judge, Vizianagaram, wherein and whereby the order dated 13.10.2015 passed in I.A.No.147 of 2015 in O.S. No.28 of 2015 on the file of the Court of Junior Civil Judge, Kothavalasa, granting temporary injunction in favour of the plaintiff, was confirmed.

2. For the sake of convenience, the parties herein are referred to as they were arrayed before the trial Court in the I.A.

3. Heard the learned counsel for both the parties.

4. The petitioner filed O.S.No.28 of 2015 against the respondents seeking perpetual injunction in respect of the suit schedule property covered by survey No.67 of Gramakantam, consisting of RCC house bearing D.No.2-18, together with wooden bunk (buddy) and vacant land. It is the case of the petitioner that her father-in-law purchased the vacant land under a registered sale deed. The petitioner constructed RCC house with the financial assistance provided by the Government of Andhra Pradesh. The further case is that the respondents are interfering with her peaceful possession and enjoyment of the suit schedule property. The respondents filed written statement denying the

averments made in the plaint *inter alia* contending that the petitioner filed the suit with an ulterior motive to grab the property of the respondents.

5. The petitioner filed I.A.No.147 of 2015 under Order XXXIX Rules 1 and 2 of CPC seeking interim injunction. The respondents filed counter opposing the claim of the petitioner.

6. The trial Court, after affording reasonable opportunity to both parties, granted interim injunction in favour of the petitioner restraining the respondents from interfering with the peaceful possession and enjoyment of the petition schedule property by the petitioner. Feeling aggrieved by the order dated 13.10.2015 passed in I.A.No.147 of 2015, the respondents preferred C.M.A.No.19 of 2015. In the appellate court, on behalf of the the petitioner Exs.P.1 to P.4 were marked and for the respondent Ex.R.1 was marked.

7. The appellate Court, after re-appraising the material available on record, arrived at a conclusion that the petitioner is entitled to the relief of temporary injunction, and consequently dismissed the appeal. Hence, the respondents filed the present revision petition.

8. Now, the point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the orders passed by the Courts below?

9. Establishment of *prima facie* case, balance of convenience and irreparable injury likely to be caused to the petitioner is *sine*

qua non to grant interim injunction under Order XXXIX Rules 1 and 2 of CPC. The person, who seeks the equitable relief, must come to the Court with clean hands. It is the case of the petitioner that the petition schedule property originally belongs to her father-in-law and she constructed RCC house with the financial assistance provided by the Government of Andhra Pradesh. Ex.P.1 is possession certificate issued by the Revenue Authorities, which clearly shows that the petitioner is in possession of the petition schedule property. A perusal of Ex.P.2 reveals that the petitioner has been paying the house tax. Ex.P.3 is the positive photos and C.D. A perusal of Ex.P.4 reveals that the petitioner lodged a complaint against the respondents alleging that they are interfering with the petition schedule property. The respondents produced Ex.R.1 sale deed. A perusal of Ex.R1 reveals that the father-in-law of the petitioner purchased the suit schedule property. As per the recitals of Ex.R.1, grandfather of the respondents is having land on east of the petition schedule property.

10. It is the case of the petitioner that she left some vacant site for ingress and egress to her house. A perusal of the record reveals that the petitioner has been doing tailoring work in the buddy situated in the petition schedule premises. The recitals of Exs.P.1 to P.4 and R.1 *prima facie* reveals that the petitioner has been in possession of the petition schedule property. The respondents did not choose to file any document to establish that they are in possession of the petition schedule property as on the date of filing of the suit. In fact the document (Ex.R.1) filed by the respondents,

supports the case of the petitioner. The petitioner also proved the balance of convenience in her favour. If no injunction is granted, it may cause untold hardship to the petitioner, when compared to the respondents.

11. The trial Court basing on the material available on record arrived at a conclusion that the petitioner proved the cardinal principles for granting interim injunction. Basing on Exs.P.1 to P.4 and Ex.R.1, the appellate Court arrived at the conclusion that *prima facie* the petitioner has been in possession and enjoyment of the petition schedule property. The Courts below have assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the Courts below. It is needless to say that this Court shall not lightly interfere with the concurrent findings of facts recorded by the Courts below. There is no illegality, irregularity or impropriety in the orders passed by the Courts below warranting interference of this Court, while exercising jurisdiction under Article 227 of the Constitution of India.

12. Hence, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 09.8.2018

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