

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.6525 OF 2017

JUDGMENT:

The present Civil Revision Petition is directed against the order dated 02.08.2017 in C.M.A. No.4 of 2016 passed by the learned VI Additional District Judge at Siddipet.

2. The plaintiff, who lost in the learned lower appellate Court viz., learned VI Additional District Judge, Siddipet in C.M.A. No.4 of 2016, succeeded in the trial Court in getting an interim injunction under Order - XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC'), in I.A. No.665 of 2013 in O.S. No.195 of 2013 by the order dated 04.01.2016, before the learned Principal Junior Civil Judge at Siddipet.

3. The suit schedule property is a house bearing No.9-1-55/1 situate at Arakot Street, Kanchari Bazar, Siddipet Town, Siddipet Mandal and District, the then Medak District.

4. Heard Smt. D. Prmada, learned counsel for the revision petitioner, and Sri K. Govind, learned counsel for respondent No.1, and perused the material on record.

5. Certain facts, which are relevant for adjudication of controversy in the present revision, are adverted to.

(a) The plaintiff (petitioner - revision petitioner) claimed right in the suit schedule property by virtue of a registered gift deed bearing document No.3628 of 2001 dated 18.11.2011 executed by her husband Viz., Syed Ahmed Mohiuddin, who, according to the revision petitioner, got the property from his maternal aunt Ms. Zakiya Banu, daughter of late Jalaluddin. Pursuant thereto, mutation registry is also effected in the municipal records by the concerned Municipality bringing the name of the plaintiff as owner and possessor of the scheduled house. Stating that the respondent intended to damage the compound wall, original suit is filed on the ground of unjust interference.

(b) Respondent No.1 viz., Zazaruddin, when appeared, filed his counter resisting the request. He has set out that Ms. Zakiya Banu purchased the petition schedule property, which constitutes her self-acquired property. She was a divorcee and died without any issues at the age of 47 years on 11.05.2002. Himself, one Ifkaruddin are brothers and Ms. Saida Bhanu, Ms. Tahara Bhanu (respondent No.3) and Mrs. Asia Jabeen (respondent No.2) are sisters of Ms. Zakiya Banu.

(c) According to them, Ms. Zakia Banu constructed four shops in the petition schedule property and gave them on rent. They also detailed that the husband of the revision petitioner is son of Mrs. Saida Bhanu, one of the sisters of respondent No.1. He sets out that taking advantage of the absence of legal representatives of

Ms. Zakia Banu, the husband of the revision petitioner, created a document by getting municipal tax payment receipt in his favour. The source of title, in the gift deed, is not disclosed. Thus, resisted the request questioning even the title.

(d) Respondent No.2 appears to have filed a memo adopting the counter filed by respondent No.1

6. The Court below, having heard both sides and on appraisal of evidence, marked as Exs.P-1 to P-24 and Exs.R-1 to R-15, arrived at the conclusion that the revision petitioner satisfied the traditional requirements of *prima facie* case, balance of convenience lying in her favour and the irreparable loss, and thereby, ordered the petition granting temporary injunction in favour of the revision petitioner restraining the respondents from interfering with her possession over the schedule property. When the said order was challenged before the learned VI Additional District Judge, Siddipet, in C.M.A. No.4 of 2016, by the order dated 02.08.2017, the said CMA was allowed setting aside the order and the decree impugned therein.

7. The learned counsel for the revision petitioner would submit that certain positive findings have been recorded by the Court below which were required to be projected only during trial, after a full-fledged trial, but, not in an interim application. The submission of the learned counsel for the revision petitioner is that the order passed by the trial Court granting injunction ought not to have been disturbed for

the reasons, even according to the respondents, it is undisputed that the revision petitioner has been in possession and enjoyment of the suit schedule property.

8. Per contra, the learned counsel for the respondents would plead that there has been fraud played and even translated document said to have filed before the Municipal authority at the time of making request for changing the name in the municipal records was a fabricated document as the very same document number under which late Ms. Zakia Banu purchased the property was shown as a purchase deed through which the husband of the revision petitioner got the petition schedule property. This apart, the submission is that when the source of title at all was not disclosed in the affidavit averments nor in the document, the gift deed said to have executed by the husband of the revision petitioner, it cannot be viewed that the revision petitioner has got *prima facie* title, which aspect was completely overlooked by the trial Court, which the lower appellate Court did find, and thereby, set aside the order.

9. One of the other submissions made by the learned counsel for the respondent is that a party, who approaches the Court with unclean hands, is not entitled to the discretionary relief of interim injunction. To fortify his stand, he places reliance in **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai**¹.

¹ (2006) 5 SCC 282

10. These have been the main submissions made before this Court.

11. Now, the question is whether the findings recorded by the lower appellate Court in setting aside the order granting injunction by the trial Court suffers from any legal infirmity, in which case alone, the revision petitioner succeeds in getting the injunction order revised?

12. At the outset, it is to be observed that the documentary evidence filed by the revision petitioner would show that the revision petitioner is in possession of the petition schedule property. What all the respondents would submit is that they have allowed the revision petitioner to continue in the said house and in such an event, certainly, the revision petitioner cannot take undue advantage of the same and set up an absolute right over the property. On the other hand, the learned counsel for the revision petitioner would submit that after getting divorce, late Ms. Zakia Banu started residing with the revision petitioner's family and they have looked after her welfare till her death occurred and that that was the reason, the property was given to the husband of the revision petitioner and in turn, the revision petitioner's husband has executed gift deed in her favour.

13. Whether there is merit in the said plea taken by the revision petitioner can only be considered during trial, but not at this stage. It is true, there appears to be no title deed except the simple sale deed

marked as Ex.P-12 dated 16.03.2000, which requires a thorough scrutiny in accordance with the evidentiary rule and also subject to its admissibility as it is admittedly unregistered sale deed; which exercise has to be taken up by the trial Court at the relevant stage. So, without resting on Ex.P-12's contents, when looked at the fact-situation, the revision petitioner is admittedly in possession of the petition schedule property supported by two tax payment receipts and electricity demand notices. The validity or otherwise or the effect of Ex.P-1 also requires evaluation in the light of the findings tendered basing on Ex.P-12. Incidentally, even certain findings recorded by the lower appellate Court with reference to the translated copy filed before the municipal authorities, when the request to bring the name of the revision petitioner in municipal records was submitted, ought not to have made in an interlocutory application as they do indicate that the Court below made some positive admissions.

17. The plea of fabrication put-forth by the respondents, though, discussed by the lower appellate Court elaborately, but nonetheless, unless the witnesses are examined, no positive findings can be tendered at this stage. It is no doubt true, the decisional law favours the respondents so far as the submission that the discretionary relief can only be granted where the party approaches the Court with clean hands as it is an equitable relief, is concerned, but it is subject to the confirmation whether there has been any fabrication or not.

18. Therefore, the three traditional requirements of *prima facie* case, balance of convenience lying in favour of the revision petitioner and the irreparable loss in case injunction is refused, stand in favour of the revision petitioner. So far as *prima facie* case is concerned, so long as Ex.P-1 stands or remains, unless erased, it is to be said that it aids the revision petitioner at this stage.

19. Therefore, without making an elaborate enquiry into the respective submissions touching E.P-12 and Ex.P-1 and the so-called sale deed translated copy, said to have been filed by the revision petitioner with the Municipality, it is to be said that, as of now, there is *prima facie* case for the revision petitioner for grant of interim injunction.

20. Therefore, the present Civil Revision Petition is allowed, at the admission stage itself. There shall be no order as to costs. However, it is desirable to direct the trial Court for disposal of the suit as expeditiously as possible. Hence, the learned Junior Civil Judge, Siddipet, is hereby directed to dispose of the suit in O.S. No.195 of 2013 within a period of six (6) months from the date of receipt of a copy of the order.

21. It is needless to mention that the observations made by this Court as well as the observations made by the lower appellate Court and the trial Court shall not have any effect and shall not be treated as positive findings being tendered in disposing of the suit, in the sense

that the trial Court shall uninfluenced by any of the observations made herein, dispose of the Interlocutory Application.

22. As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision petition stand dismissed.

A. SHANKAR NARAYANA, J

February 9, 2018.
PV

