

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.7032 of 2017

ORDER:

The Civil Revision Petition is filed against the order dated 03.11.2017 passed in I.A. No.1728 of 2016 in I.A. No.369 of 2003 in O.S. No.39 of 2003 by the IX Additional Chief Judge, City Civil Court at Hyderabad.

2) The revision petitioners are the plaintiffs in O.S. No.39 of 2003, as per the amended plaint copy. Said suit was filed for specific performance of the oral contract for sale dated 05.10.1999 with a claim of possession of delivery of possession in seeking perpetual injunction against 1st defendant—Anam Saraswathi since died issueless with no nearby legal heirs and the 5th defendant is the Government of Telangana represented by District Collector, Hyderabad is thereby impleaded. The defendants 2 to 4 are transposed from original plaintiffs 1 to 3. The suit property consists of 1173 Sq.yds together with small out house built therein an area of 200 Sq.ft bearing municipal Nos.8-2-293/82/A/171/2 & 8-2-293/82/A/172/3, in plot No.171 forming part of survey No.403/1 (old) New 120 situated at Shaikpet, Hyderabad, which is shown in red colour in the rough sketch, which is bounded by North: House bearing No.8-2-293/82/A/171/1, South: 50' wide Road, East: Plot No.170 and 170/A, West: Plot No.172. The plaintiffs' claim of

purchased is for a consideration of Rs.19,00,000/- and of which plaintiffs having paid Rs.1,00,000/- in cash on 05.10.1999 and the balance Rs.18,00,000/- was even paid earlier to it by way of cheque bearing Nos.889638 and 889641 dated 20.05.1999 and 22.06.1999 respectively drawn on Vijaya Bank, Malakpet Branch, Hyderabad and from the total sale consideration paid, the plaintiffs were put in actual possession of the property therefrom, and they are in exclusive possession and enjoyment. The Plaintiffs in part performance of agreement of sale have been exercising right and possession over said property for parking vehicles, and as ingress and egress to the houses of the plaintiffs and one G.Shivender Reddy bearing municipal No.8-2-293/82/171 (East) and (West) portions as indicated in the rough sketch. The 1st defendant has to obtain income tax clearance from the Income Tax Authorities and also to clear all the arrears of municipal tax and hand over the original title deeds and execute registered sale deed that even draft sale deed got prepared by the 1st defendant on 20.10.1999, signed by her and presented to Income Tax authorities for clearance. However, it was not obtained, which made the plaintiffs to file the suit and pending suit, the plaintiffs filed I.A. No.369 of 2003 and obtained interim injunction on 28.08.2003. The transposed defendants 2 to 4 are mainly contesting after death of 1st defendant.

3) Earlier, the suit was dismissed for default on 18.08.2009 and plaintiffs 4 to 6 filed an application in I.A. No.143 of 2009 for setting aside the order dated 18.08.2009 under Order 9 Rule 9 C.P.C and that application was ended in dismissal on 18.11.2013. Aggrieved by the same, they preferred an appeal in C.M.A. No.358 of 2015 and the same was allowed by this Court on 14.10.2015 by setting aside the dismissal order dated 18.11.2013 passed in I.A. No.143 of 2009 in O.S. No.39 of 2003 and the application in I.A. No.143 of 2009 was allowed by setting aside the default dismissal order dated 18.08.2009 and the suit is restored to file to its original number. Since there is a conflict of interest between plaintiffs 4 to 6 on one hand, who are interested in prosecuting the suit and the plaintiffs 1 to 3 on the other hand, who are disinterested in prosecuting the suit, by giving an opportunity to the plaintiffs 4 to 6 to transpose the plaintiffs 1 to 3 as defendants 2 to 4 and directed them to implead the State as a party to the suit as the deceased sole defendant had not left behind any legal representatives, though she had left behind some immovable properties and the Government may have claim under the principle of 'escheat'

4) The order in C.M.A. No.358 of 2015 of this Court dated 14.10.2015 also refers the temporary injunction orders passed in I.A. Nos.368 and 369 of 2003 dated 28.08.2003 and the CMA Nos.3772 and 3773 of 2003 were filed against the

said I.As and the said appeals were dismissed on 09.02.2004 confirming with a direction to dispose of the suit within six months from the date of receipt of copy of that order. The plaintiffs 4 to 6 and their father well known about the said direction, but the father of the plaintiffs 4 to 6 had consciously on one hand and plaintiffs 1 to 3 on the other hand rather than children of the respective two brothers, being represented by their respective fathers as next friends and the suit cause dismissed for default by one set of the parties among the plaintiffs in view of the dismissal of O.S. No.180 of 2006 filed by one P.V.Rao and in view of the conflict between the plaintiffs 1 to 3 on one hand and the plaintiffs 4 to 6, the suit was not seriously prosecuted by plaintiffs 1 to 3 in caused damage since counsel for plaintiffs 4 to 6 given up vakalath by filing I.A.No.167 of 2007 even.

5) It is also to mention that along with I.A. No.143 of 2009 (supra) which is subject matter of C.M.A. No.358 of 2015 supra, I.A. Nos.144 and 145 of 2009 were filed and since I.A. No.143 of 2009 was dismissed on 18.11.2003, consequently I.A. Nos.144 and 145 of 2009 were dismissed on 22.11.2003. Those two dismissal orders were subject matters of C.R.P. Nos.798 and 804 of 2014 and those were disposed of by this Court vide common order dated 15.09.2015, with observation that C.R.P. No.798 of 2014 was allowed by setting aside the order dated 22.11.2013 in I.A. No.145 of 2009 in O.S. No.39 of 2003 and the said I.A was allowed and C.R.P.

No.804 of 2014 was dismissed. Said I.A. Nos.144 and 145 of 2009 were filed alleging contempt of Court against respondent Nos.2 to 4 therein, who are so-called alienees from the 1st defendant in violation of temporary injunction passed in I.A. No.368 of 2003, by execution of sale deeds bearing document Nos.2437 to 2439 of 2009 dated 17.08.2009, and to declare them as not valid. This Court further observed that the respondent No.1 died pending the matters. However, she clandestinely executed the documents in favour of respondents 2 to 4 represented by their guardian and next friend which were subsequent to the temporary injunction order confirmed in CMA Nos.3772 and 3773 of 2003 dated 09.02.2004 with knowledge and in violation of the same. Even from subsequent death of 1st respondent/ 1st defendant, the documents executed by her can be allowed to stand. As per the settled law, a contemnor ought not to be permitted to enjoy and/ or keep the fruits of his contempt. Where an act is done in violation of an order of stay or injunction, it is the duty of the Court, to set the wrong right and not to allow the perpetration of the wrong doing, and if necessary by exercising the inherent power of the Court to undo the wrong. Thereby, to sub-serve the ends of justice, this Court by holding that the sale is not valid, allowed the CRP No.798 of 2014 by setting aside the order dated 22.11.2013 in I.A. No.145 of 2009 in O.S. No.39 of 2003 and allowed the said I.A. No.145 of 2009. It was however observed that

respondents 2 to 4 cannot be punished in view of there being no prohibition to purchase and accordingly dismissed the C.R.P. No.804 of 2014.

6) It is in the background of facts supra, from the litigation underwent with reference to the facts and conduct of the parties borne by record, I.A. No.1728 of 2016 was filed by plaintiffs (who are original plaintiffs 4 to 6) in O.S. No.39 of 2003 pursuant to the amendment supra, seeking police aid to implement the injunction order dated 28.08.2003 passed in I.A. No.369 of 2003. It is averred that various police complaints given against the defendants 2 to 4 and FIR Nos.196 of 2010, 109 of 2012 and 91 of 2015 were also registered and still the plaintiffs are not in position to enjoy the suit property peacefully despite injunction orders in their favour confirmed in appeal, thereby to implement the orders passed in I.A. No.369 of 2003, police aid to be granted.

7) Respondents 2 to 4 (defendants 2 to 4) opposed the same saying that the plaintiffs, never in exclusive possession, are only trying to cause interference with the property with police aid, if possible and the petition is liable to be dismissed.

8) The lower Court in the impugned dismissal order dated 03.11.2017 observed that the petitioners through GPA filed the suit for specific performance of the contract of sale against Smt.A.Saraswathi i.e., defendant No.1 and I.A No.369

of 2003 allowed against her and her men and confirmed in C.M.A. No.3772 of 2003 and subsequent thereto from the alleged ill intentions developed by respondents 2 to 4/ plaintiffs 1 to 3 to defraud the original petitioners 4 to 6. However, clandestinely entered into sale transactions with defendant No.1 and brought it into existence the three sale deeds referred supra, and sought for its cancellation in I.A. No.145 of 2009 that was even allowed in CRP No.798 of 2014 by this Court and respondents 2 to 4 represented by their father G.Rajender Reddy, who was then at the helm of affairs, caused dismissing the suit for default on 18.08.2009 is next friend of plaintiffs 1 to 3 with a malafide intention and by then plaintiffs 4 to 6 taken steps for restoration of the suit and in view of the adverse claim between them they were constrained to file an application seeking transposing the plaintiffs 1 to 3 as defendants 2 to 4 and it was allowed. Respondents 2 to 4 are allegedly moving with unsocial elements and trying to instigate the law and order problem in the suit property by creating nuisance and interfering with the possession and enjoyment of the petitioners despite several police complaints for their violent actions. Whereas the so-called highhanded actions mentioned so vaguely and as such providing of police aid can not be considered though the injunction order is in force before the death of A.Saraswathi even though the suit was dismissed for default, later restored, to say automatically the injunction order is

restored and is in subsistence. Thereby, the lower Court dismissed the police aid application.

9) In this background of facts by impugning said dismissal order in I.A. No.1728 of 2016 of the lower Court, present revision is maintained by the petitioners/ plaintiffs (supra) with the contentions that the dismissal order of the lower Court is contrary to law, weight of evidence and unsustainable and should have allowed by the lower Court the I.A. No.1728 of 2016 to implement the orders passed in I.A. No.369 of 2003 by providing police aid and thereby sought for setting aside the same. It is the further submission of the learned counsel for the petitioners that it is the duty of the Court to see that the orders of it being implemented by providing police aid and the dismissal order is unsustainable, thereby the revision is liable to be allowed.

10) Whereas it is the submission of the learned counsel for the respondents that the order of the lower Court holds good and for this Court while sitting in revision, there is nothing to interfere and police aid cannot be granted for mere sake of asking and plaintiffs are not in exclusive possession and are not entitled to seek police aid and sought for dismissal of the revision.

11) Heard both sides and perused the material on record.

12) Undisputedly it is the duty of the Court to see that the injunction order of it is to be implemented, for no one can be allowed to violate the same. Apart from right of the party to enforce the injunction orders by execution for its violation, the police aid is also one of the reliefs that can be considered to implement the orders of injunction.

13) From the above coming to the correctness of the observations in the impugned order of the lower Court, and as to what extent this Court can interfere by sitting in revision concerned, originally the plaintiffs 1 to 3 were represented by their next friend and from the factual scenario supra, the plaintiffs 4 to 6 were transposed as defendants 2 to 4 in their claiming pendente lite alienation in respect of the suit property including of violation of injunction against the 1st defendant not to alienate and since she died pending suit by alienation, the violation of injunction petition filed against her in I.A. No.144 of 2009 was dismissed and that was subject matter of C.R.P. No.804 of 2009 was consequently dismissed. However, so far as setting aside the three sales are concerned covered by I.A No.145 of 2009 covered under C.R.P. No.798 of 2009, the same was allowed. The suit dismissed for default in the factual scenario supra cause restored by the petitioners herein by filing I.A. No.143 of 2009 even that was dismissed by trial Court, but allowed C.M.A. No.358 of 2015 as referred supra, by the order of this Court and thus whatever the injunction order against 1st defendant

passed in I.A. No.368 of 2009 confirmed in CMA No.3772 of 2009, even the suit earlier dismissed for default on 18.08.2009, once restored, injunction petition with the order therein also restored automatically. Even before dismissal of the suit for default in the year 2009, the respondents 2 to 4 herein were also co-petitioners in I.A. No.368 of 2003 and were one way beneficiaries to the injunction order, it is because of the subsequent events for their claiming independent right through 1st defendant, who died issueless and without legal heirs, apart from the State Government is impleaded as proper party for her estate is escheated, police aid as sought for can be granted to maintain the existing status-quo including possession of the present plaintiffs pursuant to the injunction order passed in I.A. No.368 of 2003 confirmed in C.M.A. No.3772 of 2009 by this Court.

14) Accordingly, the revision is allowed setting aside the impugned dismissal order dated 03.11.2017 passed in I.A. No.1728 of 2016 in I.A. No.369 of 2003 in O.S. No.39 of 2003 by the IX Additional Chief Judge, City Civil Court at Hyderabad. No order as to costs.

15) Consequently, Miscellaneous petitions, if any pending in this revision, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:25.01.2018
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