

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.6627 OF 2017

ORDER

O.S.No.575 of 2016 on the file of the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, was filed by the respondents herein for a perpetual injunction restraining the defendants in the suit from interfering with their peaceful possession and enjoyment of the suit schedule property without following the due process of law. The suit schedule property is an extent of vacant land admeasuring 2579.46 square yards situated in Survey No.141/4, Nadergul Village, Saroornagar Mandal, Ranga Reddy District. The respondents-plaintiffs filed I.A.No.646 of 2016 in the said suit under Order 39 Rules 1 and 2 CPC for an interim injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. By order dated 16.03.2017, the trial Court allowed the I.A. and granted an interim injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs except under due process of law till the disposal of the suit. Aggrieved thereby, the defendants preferred an appeal in C.M.A.No.72 of 2017 under Order 43 Rule 1 CPC before the learned IV Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar. Therein, they filed I.A.No.574 of 2017 under Section 151 CPC seeking suspension of the order dated 16.03.2017 passed by the trial Court. By order dated 03.08.2017, the appellate Court allowed the I.A., suspending the order passed by the trial Court, but directed the parties to maintain *status quo* in respect of the suit schedule property obtaining as on that day pending disposal of the appeal. Aggrieved by this direction, the defendants in the suit are before this Court by way of this revision under Article 227 of the Constitution.

Heard Mr.R.Raghunandan, learned senior counsel representing Ms. Shireen Sethna Baria, learned counsel for the petitioners, and Mr.C.Raghu, learned counsel for the respondents.

Parties shall hereinafter be referred to as arrayed in the suit.

The suit claim in O.S.No.575 of 2016 was that in May, 2011, the defendants agreed with the plaintiffs' proposal to provide the suit schedule property to them for setting up a petroleum bunk after obtaining a dealership from a petroleum company. An oral agreement was stated to have been entered into that after such a dealership was granted in favour of the plaintiffs by the petroleum company, a lease would be executed by the defendants directly in favour of the petroleum company containing the exact duration of the lease, the quantum of the lease amount and other terms and conditions. They further claimed that the lease period to be stipulated in the lease document that would be executed by the defendants in favour of the petroleum company was to be 30 years. The oral agreement was allegedly to the effect that the suit schedule property should be leased out to the plaintiffs for the business of setting up a petrol bunk. They further claimed that they were put in possession of the suit schedule property pursuant to the oral agreement. They claimed that as per the oral agreement, a total refundable security deposit of Rs.50,00,000/- was to be made by them and until the petroleum company granted the dealership and a comprehensive lease deed was executed, the plaintiffs should be in possession of the property and pay a part of the said security deposit periodically to the defendants. They claimed that they had deposited amounts, aggregating to Rs.25,75,000/-, with the defendants from time to time. The plaintiffs stated that after great persuasion, they were able to get a dealership from a petroleum company and the same was under finalization but at that stage,

the second defendant developed a malafide intention and tried to interfere with their peaceful possession and enjoyment over the suit property. They claimed that they were ready to pay the balance security deposit of Rs.24.25 lakh at the time of execution of the lease agreement and sought to protect their possession by way of the injunction suit. They claimed that on 18.08.2016, the defendants, accompanied by anti-social elements, tried to interfere with their possession and they resisted the same with great effort. This was stated to be the cause of action for the filing of the suit.

The second defendant filed a counter before the trial Court contesting the interim injunction petition. Therein, he stated that he was the Managing Partner of the first defendant firm. While admitting that he had agreed to lease out the suit schedule property upon furnishing of an interest-free deposit of Rs.50,00,000/- and on a minimum monthly rent of Rs.40,000/-, he stated that the plaintiffs had committed default in paying the security deposit in three instalments, viz., Rs.10,00,000/- immediately, Rs.30,00,000/- on 24.11.2011 and Rs.10,00,000/- on 24.03.2012, as agreed. He further stated that it was only upon remittal of the entire deposit that the proposed lease was to be executed followed by delivery of possession to the plaintiffs in November, 2011. He asserted that the issue of the plaintiffs being put in possession did not arise. He admitted that they did remit part-payments towards the deposit to the tune of Rs.25.75 lakh over a period of five years. He stated that the plaintiffs had been orally informed to take back the amount paid by them but with a malafide intention and to harass them, they failed to do so. He further stated that the defendants came to know that the NOC application submitted by the plaintiffs with regard to the proposed petrol bunk had been rejected by the authorities and sought dismissal of the I.A.

Exs.A1 to A17 were marked in evidence by the plaintiffs in the said I.A. No evidence was adduced by the defendants. Exs.A1 to A15 were cash receipts bearing different dates. Ex.A16 was a statement of account. A set of photographs along with a CD was marked as Ex.A17.

Surprisingly, despite noting the contents of the counter filed by the defendants, the trial Court recorded in the order passed in I.A.No.646 of 2016 in O.S.No.575 of 2016 as follows:

‘...As seen from the averments of the petition and the counter, there is no dispute with regard to the lawful possession of the petitioners as tenants over the petition schedule property, the land admeasuring 2579.46 square yards situated in Survey No.141/4, Nadergul Village, Saroornagar Mandal, Ranga Reddy District’.

It was on the strength of this factual misconception that there was no dispute as to possession that the trial Court concluded that a *prima facie* case was established by the plaintiffs and that they were having lawful possession and enjoyment over the suit schedule property. Noting that there was no evidence that the plaintiffs were required to make over the interest-free security deposit in three instalments, the trial Court observed that nothing prevented the defendants from refusing to receive the payments made from time to time. Observing that the suit schedule property was vacant, the trial Court concluded that no prejudice would be caused to the defendants by grant of an injunction. The I.A. was accordingly allowed.

The appellate Court of the learned IV Additional District Judge, Ranga Reddy District at L.B.Nagar, while considering this order in appeal for the purpose of its interim suspension, framed the point for determination thus:

‘Whether there are sufficient grounds to suspend the order in IA No. 646/2016 in OS No. 575/2016 passed by the I additional Junior Civil Judge, Ranga Reddy District as prayed for?’

Having noted the arguments advanced on both sides, the appellate Court opined that considerable time would be taken to dispose of the main appeal but the material on record demonstrated that during the pendency of I.A.No.646 of 2016 in O.S.No.575 of 2016, an order of *status quo* had prevailed and therefore, taking into consideration the said aspect and to safeguard the interest of the parties and to preserve the property for adjudication of the suit, the trial Court held that there were just grounds to suspend the order passed in I.A.No.646 of 2016 in O.S.No.575 of 2016 with a specific direction to maintain *status quo* in respect of the property as on that day. The appellate Court accordingly passed an order to that effect.

Mr.R.Raghunandan, learned senior counsel, would contend that there was no evidence whatsoever of the plaintiffs having ever been put in possession. He would point out that the plaint itself demonstrated that the agreement was to the effect that a lease deed should be executed by the defendants in favour of the petroleum company after the plaintiffs secured a dealership from it and therefore, there was no question of the defendants putting the plaintiffs in possession before that happened. Learned senior counsel would assert that both the Courts below failed to note this crucial aspect, which completely disentitled the plaintiffs from seeking an interim injunction or holding the defendants to ransom with a *status quo* order.

Per contra, Mr.C.Raghu, learned counsel, would contend that as the order passed by the appellate Court was merely a reiteration of the *status quo* order which was in operation pending disposal of I.A.No.646 of 2016 in O.S.No.575 of 2016, no cause is made out for interference in this revision with the direction to maintain *status quo* pending disposal of the appeal by the appellate Court. He would further contend that as the order passed by the appellate Court was to remain operative only during the pendency of the

appeal and did not have any irreversible adverse effect upon the defendants, they are not at liberty to maintain this revision under Article 227 of the Constitution. He would place reliance on SURYA DEV RAI V/ s. RAM CHANDER RAI¹ to support his contention.

Dealing with the preliminary objection as to maintainability of this revision, it may be noted that Article 227 of the Constitution vests this Court with the power of judicial superintendence over all subordinate Courts within its jurisdiction. In CHANDRASEKHAR SINGH V/ s. SI YA RAM SINGH², the Supreme Court considered the scope of jurisdiction under Article 227 of the Constitution and summed up the position of law as under:

(i) ...;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors;

(iii) the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a court of appeal.

Thereafter, in BABY V/ s. TRAVANCORE DEVASWOM BOARD³, the Supreme Court clarified that even if revisional jurisdiction is not available to the High Court, it would still have power under Article 227 of the Constitution to quash orders passed by the Tribunals if the findings of fact were arrived at by non-consideration of relevant and material documents, consideration of which could have led to an opposite conclusion.

¹ (2003) 6 SCC 675

² (1979) 3 SCC 118

³ (1998) 8 SCC 310

In *SURYA DEV RAI*¹, the specific question raised before the Supreme Court was as to the impact of the amendment to Section 115 CPC by Amendment Act 46 of 1999, with effect from 01.07.2002, on the power and jurisdiction of the High Court to entertain petitions under Article 227 of the Constitution. Answering the same, the Supreme Court held that the power of the High Court under Article 227 of the Constitution would always be in addition to the revisional jurisdiction conferred on it and curtailment of a revision petition under Section 115 CPC, by amendment, would not take away the Constitutional power of superintendence conferred on the High Court under Article 227 of the Constitution. The said power was held to exist, untrammelled by the amendment to Section 115 CPC, and was to be exercised subject to rules of self-discipline and practice, which are well settled. The Supreme Court finally summed up as under:

'38. (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred

thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.'

In YESHWANT SAKHALKAR V/ s. HIRABAT KAMAT MHAMAI⁴, referring to SURYA DEV RAI¹, the Supreme Court affirmed that there could be no doubt that a revision petition under Article 227 of the Constitution was maintainable.

Therefore, there can be no fetters on the power of judicial superintendence vesting in this Court under Article 227 of the Constitution on the touchstone of irreversible impact of an order or otherwise. In the event the subordinate Court failed to exercise a jurisdiction vesting in it or exercised it illegally or irregularly, this Court would always have the power under Article 227 of the Constitution to set right such error, irrespective of whether the same is of irreversible nature or otherwise. Therefore, merely because the order under revision presently is an order of *status quo*, which is to be continued pending disposal of the appeal by the appellate Court, it does not have any effect on the maintainability of this revision petition. The said *status quo* was directed to be continued by the appellate Court pending disposal of the appeal, specifically observing that considerable time would be taken to dispose it of. In consequence, the defendants in the suit would be bound by such a *status quo* order for a long time to come, even by the reckoning of the appellate Court itself. They would therefore be sufficiently aggrieved by such an order so as to come before this Court under Article 227

⁴ (2004) 6 SCC 71

of the Constitution. The argument to the contrary by Mr.C.Raghu, learned counsel, is therefore rejected.

At this stage, it may be noted that the matter has come before this Court by way of this revision from an interlocutory order passed by the trial Court and the appeal filed by the defendants against the said order is still pending consideration before the appellate Court. It is therefore wholly premature for this Court to go into the merits of the matter. Any observations by this Court at this stage may invariably prejudice one or the other party. It would suffice to note that the order passed by the trial Court proceeded on a factual misconception that there was no dispute between the parties that the plaintiffs had been put in possession of the suit schedule property. This was clearly an error on the part of the trial Court as the defendants specifically stated in their counter filed in the I.A. that the question of the plaintiffs being put in possession did not arise. Without first deciding this crucial aspect as to whether there was enough evidence in support of the plaintiffs' claim that they had been put in possession, the trial Court straightaway held in their favour and granted an interim injunction restraining the defendants from interfering with their possession over the suit schedule property.

Further, the arguments advanced by both sides before this Court demonstrate that there is also a dispute as to the identity and location of the suit property. Though this aspect of the matter was not raised before the trial Court, as rightly pointed out by Mr.C.Raghu, learned counsel, it would have crucial significance in the interim injunction petition. As these essential factual aspects were never considered by the trial Court while allowing I.A.No.646 of 2016 in O.S.No.575 of 2016, this Court is of the opinion that the interest of justice requires that the trial Court undertake the exercise

afresh and decide I.A.No.646 of 2016 in O.S.No.575 of 2016 in accordance with law upon a *prima facie* determination of relevant factual aspects.

The civil revision petition is accordingly allowed setting aside the order dated 03.08.2017 passed by the learned IV Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.574 of 2017 in C.M.A.No.72 of 2017 and the order dated 16.03.2017 passed by the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.646 of 2016 in O.S.No.575 of 2016. I.A.No.646 of 2016 in O.S.No.575 of 2016 is remitted to the file of the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, for consideration afresh on merits and in accordance with law. This order shall be brought to the notice of the appellate Court of the learned IV Additional District & Sessions Judge, Ranga Reddy at L.B.Nagar, so that necessary orders are passed for closure of the appeal in C.M.A.No.72 of 2017 arising out of the order which is now set aside.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

8th JUNE, 2018

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SANJAY KUMAR, J