

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6718 of 2017

ORDER:

1 Challenge in this Civil Revision Petition, filed under Article 227 of the Constitution of India, is to the order dated 02.11.2017 passed in C.M.A.No.87 of 2017 on the file of the Court of the X Additional Chief Judge, City Civil Court, Hyderabad.

2 The parties to this revision petition will hereinafter be referred to as they are arrayed before the trial Court to avoid confusion.

3 The factual matrix leading to the filing of the present Civil Revision Petition, is as follows:

4 The suit A to E schedule properties, to an extent of 1080 sq. yards and some other properties originally belong to one Manghal G.

One Ranjit Jain purchased an extent of 240 sq. yards (Item - A) from said Manghal G under a registered sale deed dated 01.04.2015. The said Ranjit Jain in turn executed a registered gift deed in favour of petitioner Nos.1 and 2 in respect of the Item - A of the suit schedule property on 14.2.2017.

One Shah Roopraj purchased an extent of 120 sq. yards (Item - B) from said Manghal G under a registered sale deed dated 01.04.2015. The said Shah Roopraj in turn executed a registered gift deed in favour of petitioner No.2 in respect of Item - B of the suit schedule property on 14.02.2017.

One Ritesh Kumar Sarma purchased an extent of 240 sq. yards (Item - C) from said Manghal G under a registered sale deed dated 01.04.2015. The said Ritesh Kumar Sarma in turn executed a registered gift deed in favour of petitioner No.3 in respect of the Item - C of the suit schedule property on 14.2.2017.

One Hajaram Ratanji purchased an extent of 240 sq. yards (Item - D) from said Manghal G under a registered sale deed dated 25.04.2015. The said Hajaram Ratanji in turn executed a registered gift deed in favour of petitioner No.4 in respect of the Item - D of the suit schedule property on 14.2.2017.

One Balabhadra Jagan Mohan Rao purchased an extent of 240 sq. yards (Item - E) from said Manghal G under a registered sale deed dated 22.04.2015. The said Jagan Mohan Rao in turn executed a registered gift deed in favour of petitioner No.5 in respect of the Item - E of the suit schedule property on 14.2.2017.

5 The petitioners submitted application to the Greater Hyderabad Municipal Corporation seeking permission in order to make constructions in the suit schedule property. However, the Greater Hyderabad Municipal Corporation neither granted permission nor rejected the permission to the petitioners. If the GHMC did not reject the application within 30 days, the petitioners are entitled to make construction in view of deemed sanction. The petitioners have been in possession and enjoyment of the suit schedule property. While so, the respondents, without any right whatsoever, are trying to interfere with the suit schedule property. The petitioners filed Writ Petition Nos.38327 of 2015 and

W.P.No.8798 of 2017 and obtained interim orders against the respondents. In spite of interim orders passed by this Court, the respondents are interfering with the construction activity of the petitioners. Hence the petitioners filed O.S.No.1197 of 2017 on the file of the Court of the III Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction against the respondents. During the pendency of the said suit, the petitioners filed I.A.No.139 of 2017 under Order 39 Rules 1 and 2 seeking temporary injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the plaint A to E schedule properties as well as the construction activity being carried on by them in the suit schedule property.

6 The respondent Nos.1 to 3 filed counter denying the averments made in the petition, *inter alia*, contending that the land in question belongs to the Government, therefore, the petitioners have no right whatsoever to make constructions. After following the due procedure the then District Collector, Hyderabad directed the Revenue Divisional Officer, Hyderabad to issue pattas in favour of eligible persons in respect of an extent of 1080 sy. Yards in the year 1989. The RDO issued 129 house site pattas to the eligible families vide file No.G/1944/1989. During the enquiry the local people have informed that some of the patta holders have taken amount from some unknown persons who at present are insisting to repay the amount or to vacate the houses. The third respondent addressed a letter to the Station House Officer, Begum Bazar Police Station, Hyderabad on 19.09.2015 to book a criminal case against the petitioners in pursuance of which a case in Cr.No.84 of 2016

was registered on 08.03.2016. As per the Town Survey Records, the land in question is a government land. The suit is not maintainable in view of non-impleading of Greater Hyderabad Municipal Corporation. The petitioners filed the suit suppressing the factum of filing of Writ Petition Nos.38327 of 2015 and W.P.No.8798 of 2017 by them and hence the petition is liable to be dismissed. Hence the petition may be dismissed.

7 The trial Court, after affording reasonable opportunity to both parties, arrived at a conclusion that the petitioners are not entitled to interim injunction and consequently dismissed the I.A.No.139 of 2017 on 17.8.2017. Feeling aggrieved by the orders of the trial Court, the unsuccessful petitioners preferred CMA No.87 of 2017 on the file of the Court of the X Additional Chief Judge, City Civil Court, Hyderabad.

8 During the pendency of the appeal, Exs.P.1 to P.22 were marked on behalf of the petitioners and Exs.R.1 to R.4 were marked on behalf of the respondents.

9 Basing on the oral, documentary evidence and other material available on record, the appellate court arrived at a conclusion that the petitioners are entitled to interim injunction and accordingly allowed the CMA on 02.11.2017 by setting aside the order dated 17.8.2017 passed in I.A.No.139 of 2017 by the trial Court. Hence the present revision by the respondents.

10 The learned Government Pleader for Arbitration (TG) appearing for the respondents (revision petitioners) submitted that the appellate court failed to consider that Manghal G has no right

or title to the suit schedule property, in such circumstances, no credence can be attached to Exs.P.1 to P.20. He further submitted that simply because GHMC has not granted sanction within 30 days from the date of application that itself is not a valid ground to grant interim injunction in favour of the petitioners. He further submitted that the appellate Court failed to consider that the person who suppressed the material facts is not entitled to the equitable relief of interim injunction. He further submitted that the appellate court granted interim injunction in favour of the petitioners on assumptions and presumptions, therefore, this is a fit case to allow the Civil Revision Petition.

11 *Per contra*, Sri Vedula Venkata Ramana, the learned senior counsel appearing for the petitioners (respondents herein) submitted that the trial Court has not marked the documents filed by both parties and dismissed the petition on assumptions and presumptions. He further submitted that the findings recorded by the appellate court are based on the documents produced by both parties. He further submitted that non-mentioning of filing of Writ Petitions by the petitioners is not a valid ground to allow the revision. He further submitted that this Court shall not lightly interfere with the findings recorded by the courts below while exercising jurisdiction under Article 227 of the Constitution of India.

12 The point that arises for consideration in this Civil Revision Petition is 'whether there is any illegality, irregularity or impropriety in the impugned order?'

13 Before adverting to the findings recorded by the appellate court, it is not out of place to refer to the case law cited by the learned counsel for the petitioners.

Dasari Laxmi vs. Bejenki Sathi Reddy¹ wherein this court held at para No.17 as follows:

17. On what is a prima facie case that required to be established is though not the chance of ultimate success as held in Chand Sultana Alias Indra Bai V. Khurshid Begum {1963 (1) ALT 171}, since the rigour is watered down, however, it is not a mere bonafide contention and involvement of a triable issue, but something more than that; that too when the claim is for injunction based on title and possession; the Court has to incidentally go into the title to decide the existence or not of prima facie case as laid down in Saraswathi vs. Dr. Jaganmohan Rao {1985 (1) APLJ 277}.

Rame Gowda vs. M. Varadappa Naidu² wherein the Hon'ble apex Court held at para Nos.8 and 12 as follows:

8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

12. In Kallappa Rama Londa's case {AIR 1995 Kant 238}, the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title, and on dealing with several decided cases the learned Judge has agreed with the proposition that where the suit for declaration of title

¹ 2015 (1) ALT 209

² (2004) 1 SCC 769

and injunction is filed and the title is not clear, the question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law.

Surya Dev Rai vs. Ram Chanderr Rai³ wherein the Hon'ble apex Court held at para No.38 as follows:

38. (2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the 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.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

S.J.S. Business Enterprises vs. State of Bihar⁴ wherein the Hon'ble apex Court held at para No.13 as follows:

13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of

³ (2003) 6 SCC 675

⁴ (2004) 7 SCC 166

the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken . Thus when the liability to Income Tax was questioned by an applicant on the ground of her non- reside.

Arunima Baruah vs. Union of India⁵ wherein the Hon'ble apex Court held at para No.12 as follows:

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

14 Establishment of prima facie case, balance of convenience and irreparable loss likely to be caused to the petitioner is *sine qua non* to grant interim injunction. It is needless to say that a person who seeks equitable relief must approach the court with clean hands. While deciding the interlocutory applications, the Court shall not express any opinion which will ultimately effect the rights of the parties to the proceedings at the time of full fledged trial. In a suit for perpetual injunction the Court has to consider whether the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. The Court cannot decide the title of the parties in a suit for perpetual injunction. However, the Court can incidentally look into the title of the parties.

15 The trial Court dismissed the injunction petition on two grounds, viz., 1) the petitioners failed to prove the title of Manghal

⁵ (2007) 6 SCC 120

G and 2) no proof was filed by the petitioners to show that they are in physical possession of the suit schedule property.

16 For one reason or the other, the trial Court did not mark the documents filed by both parties. During the pendency of the CMA, the appellate court called for the documents from the trial Court and marked them. This itself clearly demonstrates that the trial Court passed order without taking into consideration the various documents filed by both parties. It is the case of the petitioners that one Manghal G is the owner of the suit schedule property. A perusal of Exs.P.2, P.6, P.10, P.14 and P.18 *prima facie* reveals that the donors of the petitioners have purchased the suit schedule A to E properties under various registered sale deeds dated 01.04.2015, 22.4.2015 and 25.4.2015 from one Manghal G. The petitioners got the suit schedule property by virtue of registered gift deeds Exs.P.1, P.5, P.9, P.13 and P.17. A perusal of Exs.P.4, P.8, P.12, P.16 and P.20 encumbrance certificates, *prima facie*, reveals that the petitioners are in possession of the suit schedule property. A perusal of the above documents *prima facie* reveals that the petitioners are in possession of the suit schedule property as on the date of filing of the suit. In W.P.No.38327 of 2015 filed by the petitioners, this Court directed the respondents not to dispossess the petitioners from the petition schedule property till further orders. In W.P.No.8798 of 2017 this court passed the order to the effect “there shall be interim direction to the respondents not to evict the petitioners without following due process of law”.

17 At the time of arguments, both counsel submitted that the orders passed by this court in the above two writ petitions are still

in force. This also clearly indicates that the petitioners are in possession of the petition schedule property.

18 A perusal of Ex.P.3, P.7, P.11, P.15 and P.19 clearly reveals that the petitioners have submitted an application to the GHMC seeking permission to make constructions in the suit schedule property. For one reason or the other, the GHMC neither granted nor rejected permission in favour of the petitioners within 30 days from the date of application. If no orders are communicated by GHMC, it amounts to deemed sanction in view of Section 437 of the GHMC Act. The petitioners have followed the procedure as contemplated under the GHMC Act with an intention to make constructions in the suit schedule property.

19 The predominant contention of the learned Government Pleader is that the suit schedule property belongs to the Government, therefore, the petitioners have no right whatsoever to make constructions therein. His further contention is that Manghal G has no title to the suit schedule property and hence much weight cannot be attached to the sale deeds and gift deeds produced by the petitioners.

20 While deciding the interlocutory applications, the Court shall not express any opinion with regard to the validity or otherwise of the sale deeds and gift deeds. If the court expresses any opinion about the validity or otherwise of those documents, it may cause prejudice to one of the parties to the proceedings. At this stage, the court has to consider whether the documents produced by the petitioners prove the prima facie case or not.

21 As per the averments made in the counter, the Government granted pattas in favour of eligible persons. There is no material available on record to establish that the Government resumed the suit schedule property by following the due process of law.

22 Ex.R.1 is the Town Survey Register. Ex.R.2 is the plan prepared by the Tahsildar. As per these two documents, the land in question originally belongs to Government. The respondents themselves have admitted that the Government has issued pattas in favour of eligible persons, who in turn sold the property. Unless and until the Government resume the land by following the due process of law, these two documents are no way helpful to the respondents.

23 In a suit for perpetual injunction, the Court has to consider whether the petitioner has been possession of the suit schedule property, much less as on the date of filing of the suit. Whether the petitioner is having a title or not over the suit schedule property is secondary in a suit for perpetual injunction. In the instant case, by marking the sale deeds, encumbrance certificates and gift deeds, the petitioners prima facie established their possession over the suit schedule property. The material available on record reveals that the balance of convenience is in favour of the petitioners.

24 The other contention of the learned Government pleader is that the petitioners suppressed the factum of filing of Writ Petitions, that itself is a valid ground to dismiss the injunction petition.

25 It is an admitted fact that the petitioners have filed Writ Petition Nos.38327 of 2015 and 8798 of 2017 wherein this court directed the respondents not to dispossess the petitioners from the suit schedule property without following due process of law.

26 I am fully agreeing with the submission made by the learned Government Pleader that suppression of fact much less a material fact is a valid ground to reject the equitable relief. However, the test to be applied is whether suppression of a particular fact will tilt the decision of the court or not. Had it been the case of the respondents that the petitioners failed to get interim orders in the Writ Petitions, certainly, suppression of such fact will disentitle the petitioners to claim equitable relief of injunction. On the other hand, this Court granted orders in favour of the petitioners. In such circumstances, non-disclosure of filing of Writ Petitions by itself is not a valid ground to dismiss the injunction petition without considering the other relevant factors. In fact, the factum of passing of interim orders by this court in the above Writ Petitions strengthens the case of the petitioners. Having regard to the facts and circumstances of the case and also the principle enunciated in **S.J.S. Business Enterprises** and **Arunima Baruah** (4 and 5 supra) I am unable to accede to the contention of the learned Government Pleader that the petition is liable to be dismissed in limine.

27 A perusal of the counter clearly reveals that the revenue officials have visited the suit schedule property and a criminal case was registered against the petitioners. During the pendency of the Civil Revision Petition both parties filed photos. A perusal of the

said photos indicates that the petitioners have dug pits in the suit schedule property in order to start construction work.

28 The learned counsel for the petitioners strenuously submitted that the word 'enjoyment' of suit schedule property by the petitioners encompasses in it to make constructions thereby to enjoy the property by the petitioners. The petitioners filed the suit for perpetual injunction restraining the respondents from interfering with the suit schedule property including constructions. The petitioners filed I.A.No.139 of 2017 under Order 39 Rules 1 and 2 seeking temporary injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the plaint A to E schedule properties as well as the construction activity being carried on by them. If the petitioners are not allowed to make constructions, undoubtedly, it may cause hardship to the petitioners when compared to the respondents. The appellate court while allowing the Civil Miscellaneous Appeal, in ParaNo.22 made the following observations.

“If injunction is granted in favour of the petitioners, no prejudice would be caused to the respondents since it is always open to them to initiate suitable proceedings if at all the petitioners do not have any valid title and they may recover possession by following due process of law.”

29 This clearly indicates that the appellate court has taken into consideration the overall legal remedies, if ultimately, the suit is dismissed. While passing interim orders, the court has to strike a balance between the parties.

30 During the pendency of the Civil Revision Petition, the third petitioner filed an undertaking affidavit on behalf of himself and other petitioners, of which Para No.5 reads as follows:

“I am filing the present affidavit having taken instructions from the other respondents/plaintiffs also and I hereby state that in the event of our failure in the suit, we hereby undertake that we will not claim any equities whatsoever in so far as the constructions that may be raised by us during the pendency of the suit. We further state that we cannot claim any damages or the like for such constructions in the event of our failure in the suit.”

31 In view of the undertaking given by the petitioners, even if the petitioners are allowed to make constructions, the same may not cause any prejudice to the rights of the respondents. If ultimately the suit is dismissed, the petitioners have to vacate the suit schedule property by foregoing the entire expenditure incurred by them. The purport of giving undertaking is that the petitioners will not claim any equities or damages from the respondents. This indicates that any construction made by the petitioners is at their own risk. In the light of the foregoing discussion, I am of the considered view that if injunction is rejected, it will cause untold hardship to the petitioners when compared to the respondents.

32 The appellate court has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the petitioners are entitled to injunction. The findings recorded by the appellate court are based on documentary evidence produced by both parties. I am fully endorsing with the findings recorded by the appellate court. On the other hand, the trial Court passed orders without taking into consideration the various documents filed by both parties. In such circumstances, the order passed by the trial Court is unsustainable. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this court in exercise of jurisdiction

under Article 227 of the Constitution of India. The Civil Revision Petition lacks merits and bona fides.

33 In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 20-09-2018.

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