

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.78 of 2019

ORDER :

This Civil Revision Petition is filed by the petitioner challenging the order dt.05.11.2018 passed in Civil Miscellaneous Appeal No.8 of 2017 on the file of VI Additional District Judge, at Siddipet, Medak District, setting aside the order dt.19.06.2017 passed in I.A.No.178 of 2014 in O.S.No.158 of 2014 on the file of Junior Civil Judge, Dubbak.

2. The petitioner herein is plaintiff in the above suit.
3. He filed the suit against the respondents for a perpetual injunction restraining the respondents from interfering with his alleged possession and enjoyment of the suit schedule property.
4. The petitioner contends that he is the owner and possessor of the plaint schedule properties in Sy.Nos.10/A, 11/A and 958 of Cheekode Village, Dubbak Mandal of Medak District consisting of Ac.1.0 ½ gts.; that his name was mutated in the Revenue Records and he was also issued pattadar pass books and title deeds, and the Pahanies contained his name; that the respondents, who are his agnates, and who have no concern with the suit schedule property in any manner, tried to interfere with his possession of the suit schedule property on 10.08.2014 and also tried to occupy the same; and so he had to file the suit.
5. Written Statement was filed by the 2nd defendant opposing the suit claim and denying the ownership and possession of the petitioner in respect of the plaint schedule property. It was contended that the land in Survey

No.958 was allotted to petitioner's father for rendering service; that the Tahsildar issued *ryotwari* patta certificate in the name of father of the petitioner; that the said land is *Inam* land and the petitioner colluded with the Revenue authorities and got mutated his name in the patta and also got included the land in Survey Nos.10 and 11. I was also pointed out that the defendants / respondents are the natural brothers and sister of petitioner and both the petitioner and respondents were enjoying their respective shares. It was also contended that by playing fraud, the petitioner got mutated his name in the Revenue Records and obtained pattadar pass book and he had in fact forged the same by removing the photo therein.

6. This written statement was adopted by the other respondents / defendants.

7. Pending suit, the petitioner filed I.A.No.178 of 2014 under Order XXXIX Rules 1 and 2 C.P.C. seeking *ad interim* injunction against the respondents and reiterating the contents of the plaint.

8. Counter-affidavit was filed by respondents adopting the stand taken by them in the written statement.

9. Before the Junior Civil Judge, Dubbak the petitioner examined himself as PW.1 and got marked Exs.A.1 to A.9; and the respondents marked Exs.B.1 and B.2.

10. By order dt.19.06.2017, the said Court below granted *ad interim* injunction in respect of only the land in Survey No.10/A of extent Acs.0.2 gts and Survey No.11/A of extent Acs.0.6 ½ guntas, but denied temporary injunction in respect of Acs.0.32 gts. in Survey No.958. It held that as per

the documents filed by the respondents, the land in Survey No.958 of extent Ac.0.32 gts. stands in the name of a mosque that, in fact, the said land belongs to the Government; but the respondents did not file any documents to show that they have a right over the land in Survey No.10/A and 11/A, and therefore, the petitioner is entitled to injunction for those lands only.

11. Assailing the same, the respondents filed Civil Miscellaneous Appeal No.8 of 2017 before the VI Additional District Judge, Siddipet, Medak District.

12. The said Appeal was allowed on 05.11.2018 by the lower Appellate Court. It took note of the third-party affidavit filed by petitioner on 17.03.2017 in the I.A. that the parties are all children of Late Maqдум Ali and held that the respondents are real brothers and sister of petitioner, and the petitioner had taken false plea that they are agnates. It held that land in Survey No.958, as per the documents filed by the parties, belong to one Ashurkhan; and that the Trial Court rightly declined to grant injunction in respect of the said land. It observed that as regards the lands in Survey Nos.10 and 11, there is no mention in the affidavit filed by petitioner as to how he got these lands. After referring to the Pahanies, it held that there is no possession of the petitioner recorded in either the possession or pattadar column continuously in respect of land in Survey No.10/A or Survey No.11/A continuously.

13. Assailing the same, the present Civil Revision Petition is filed by the petitioner.

14. The counsel for petitioner contended that the lower Appellate Court ought not to have reversed the well-considered findings of the Trial Court, and that it had not properly appreciated the evidence adduced by the petitioner.

15. Since the Trial Court had not granted temporary injunction to petitioner in Survey No.958 and petitioner had not filed any appeal questioning the same, he cannot canvass any arguments regarding the said land in this Revision.

16. The Trial Court while granting injunction to petitioner in respect of lands in Survey No.10/A and 11/A ignored the omission in the I.A. / plaint by petitioner pleading as to how the petitioner acquired title over these lands and it had also not referred to any Pahanies filed by petitioner to come to the conclusion that he was in possession of the said land. But the lower Appellate Court had rightly considered the said facts and also the absence of continuous entries showing the name of petitioner as possessor of the land in Sy.Nos.10/A and 11/A to reverse the order of the Trial Court.

17. Moreover, the third-party affidavit filed by the petitioner itself on 17.03.2017 revealed that petitioner as well as respondents are children of Late Maqдум Ali, but the petitioner had falsely taken a plea that the respondents are his agnates and suppressed the true fact that they are his own siblings.

18. In view of these circumstances, I do not find any error of jurisdiction in the order passed by the lower Appellate Court allowing Civil Miscellaneous Appeal No.8 of 2017 in favour of respondents, and setting

aside the order dt.19.06.2017 passed in I.A.No.178 of 2014 in O.S.No.158 of 2014 on the file of Junior Civil Judge, Dubbak.

19. Accordingly, the Revision is dismissed. No order as to costs.

20. However, the Trial Court is directed to decide the suit uninfluenced by any observations made by it in the order passed by it on 19.06.2017 in I.A.No.178 of 2014 or by the lower Appellate Court in its order dt.05.11.2018 in Civil Miscellaneous Appeal No.8 of 2017, or by this Court in this order.

21. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.02.2019

Ndr/*

