

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**Civil Revision Petition Nos.88 and 102 of 2019**

**COMMON ORDER :**

Both these Civil Revision Petitions arise out of the same suit between the same parties, and so they are therefore disposed of by this common order.

2. The petitioners herein are defendants in O.S.No.88 of 2016 on the file of Additional Junior Civil Judge, Husnabad.

3. The respondent filed the said suit against the petitioners for a perpetual injunction restraining the petitioners from interfering with his alleged possession and enjoyment of the plaint schedule property which is an agricultural land. He asserted that he is the absolute owner thereof having purchased it from the original owner forty-four years prior to the filing of the suit through a simple sale deed and contended that he got mutated his name as pattadar and possessor in the Revenue records through ROR proceedings. He also contended that he obtained Pattadar Passbook and title deed in his favour and that Patta number is 1231. He alleged that petitioners without having right, title or interest in the subject property are trying to interfere with possession of the plaint schedule property and so he filed the suit.

4. Written statement was filed by the 1<sup>st</sup> petitioner opposing the suit claim, and contending that petitioners are joint owners and possessors of the plaint schedule property along with one Smt. Sirisha

who is the widow of 1<sup>st</sup> petitioner's second son. It is alleged by petitioners that the respondent created the simple sale deed dt.01.03.1972 as if it was allegedly executed by the father of 1<sup>st</sup> petitioner in collusion with Revenue Officials of Husnabad Mandal, and brought into existence the pattadar pass book and title deed and got recorded his name as pattadar and possessor since 2007-08 in the pahanies. He also stated that he challenged the ROR proceedings before the Revenue Divisional Officer, Karimnagar in Appeal No.9034/2016 filed on 12.07.2016. It is also contended that the respondent has not filed the simple sale deed under which he claimed to have purchased it from the original owner, and such a document did not create any right in the respondent over the plaint schedule property as per Section 17(1) of the Indian Registration Act, 1908. The petitioners assert that they are in possession of the plaint schedule properties and that the respondent was not in possession thereof.

**5.** Pending the suit, the respondent filed I.A.No.59 of 2016 under Order XXXIX Rules 1 and 2 of Civil Procedure Code. He reiterated the contents of plaint.

**6.** The petitioners filed counter denying the contentions of respondent and reiterating the stand taken by them in the written statement.

**7.** Before the Court below, the respondent marked Exs.A.1 to A.17, while the petitioners marked Exs.B.1 to B.7.

8. By order dt.13.12.2016, the Court below granted temporary injunction pending suit in favour of respondent. After referring to the contentions of both sides, it held that in an application for temporary injunction, primarily the possession over the suit schedule property on the date of filing of the suit, has to be seen. It referred to Ex.B.5 which mentioned that petitioners had given the suit schedule property for cultivation to respondent and Ex.A.3=B.3 (which is the Pahani for the year 2007-08) which showed the respondent's name as possessor of the plaint schedule land. It also referred to the Pahanies, Exs.A.4 to A.16 filed by the respondent, which showed his possession of the plaint schedule property; and observed that in the light of the admission contained in Ex.B.5 that petitioners had put in possession the respondent legally for lease, and in the absence of any valid proof of recovery of possession by the petitioners, the respondent is entitled to temporary injunction, pending suit.

9. Challenging the same, the petitioners filed C.M.A.No.12 of 2016 before the Senior Civil Judge, Huzurabad.

10. In the meantime, the respondent filed I.A.No.65 of 2017 in O.S.No.88 of 2016 for grant of police aid for implementation of the *ad interim injunction* granted in his favour by the Trial Court on 13.12.2016. He contended that notwithstanding the grant of *ad interim injunction* in his favour, the petitioners were violating it with the help of unsocial elements and had also threatened him with dire consequences.

**11.** The Trial Court dismissed I.A.No.65 of 2017 on 16.08.2017 on the ground that no evidence has been adduced by respondent in support of his plea that the injunction order was being violated by petitioners.

**12.** Challenging the same, the respondent filed C.M.A.No.15 of 2017 before the Senior Civil Judge, Huzurabad which allowed the Appeal and held that in view of the counter filed in I.A.No.59 of 2016 in O.S.No.88 of 2016 wherein the petitioners were claiming possession of the suit schedule property, there is every likelihood of breach of injunction orders by the petitioner, and it is the duty of the Court to see that orders passed are implemented. It therefore granted on 29.11.2018 police aid to the respondent for implementation of the orders of injunction granted on 13.12.2016 in I.A.No.59 of 2016 in O.S.No.88 of 2016.

**13.** C.M.A.No.12 of 2016, which was filed by petitioners, was dismissed on 29.11.2018 by the Senior Civil Judge, Huzurabad. It confirmed the findings of the Trial Court.

**14.** The lower Appellate Court held that the documents produced by the respondent *prima facie* showed that he is the pattadar and possessor of the suit schedule property on the date of filing of suit and also earlier to it, and that petitioners failed to produce any document to show that they were in possession of the plaint schedule property as on the date of the suit. It rejected the document dt.19.06.2012 filed by

petitioners wherein the respondent is alleged to have undertaken to mutate the properties in the name of petitioners on the ground that the signature therein did not tally with the signature of the respondent.

**15.** Challenging the order dt.29.11.2018 passed in C.M.A.No.12 of 2016, the petitioners filed C.R.P.No.88 of 2019. Likewise, challenging the order dt.29.11.2018 passed in C.M.A.No.15 of 2017, the petitioners filed C.R.P.No.102 of 2019.

**16.** Heard the counsel for petitioners.

**17.** The counsel for petitioners contended that the findings of the Courts below are not proper and they could not have granted any temporary injunction in favour of respondent who did not file his document of title; and that the Courts below could not have simply relied on the entries in the pahanies and granted temporary injunction in respondent's favour.

**18.** I am unable to accede to the said contention for the reason that the title to the property is to be only incidentally gone into in a suit for injunction and in an application for temporary injunction as well as in the suit, the Court is *prima facie* concerned with possession of the property on the date of filing of the suit.

**19.** In the instant case, Exs.A.2 to A.16-Pahanies, filed by the respondent show that respondent's possession and enjoyment of the plaint schedule property. Also, Ex.B.5 filed by petitioners itself show that they had given the property on lease to the respondent.

Therefore, burden is on them to show that they have recovered possession of the property from respondent, but there is no evidence adduced in that regard.

**20.** Therefore, I am of the opinion that the Courts below did not commit any error of jurisdiction in appreciating evidence placed before them and in coming to the conclusion that the respondent is entitled to an *ad interim injunction* in I.A.No.59 of 2016 and in dismissing C.M.A.No.12 of 2016.

**21.** Once the order of temporary injunction in I.A.No.59 of 2016 is confirmed, it is the duty of the Court to see that it is implemented by giving police aid to the respondent particularly in view of the stand taken in the counter filed in I.A.No.65 of 2017 by the petitioners that they are in possession of the property, since there would be a likelihood of breach of injunction orders by the petitioners, if such police aid is not granted. Therefore, even the order dt.29.11.2018 passed in C.M.A.No.15 of 2017 by the Senior Civil Judge, Huzurabad does not warrant any interference in exercise of its jurisdiction of this Court under Article 227 of the Constitution of India.

**22.** Accordingly, the Civil Revision Petitions fail and they are dismissed. No order as to costs.

**23.** However, the Court below is directed to decide the suit uninfluenced by any observations made by it in I.A.No.59 of 2016 or C.M.A.No.12 of 2016; or in I.A.No.65 of 2017, or in C.M.A.No.15 of

2017 by the Senior Civil Judge, Huzurabad; and by this Court in these Civil Revision Petitions.

**24.** As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 28.01.2019

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