

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.87 of 2019

O R D E R:

This Revision is filed under Article 227 of the Constitution of India assailing the order dt.25.09.2018 in CMA.No.5 of 2018 of the II Additional District Judge (FTC) FAC-VII Additional District Judge, Mahabubnagar, confirming the order dt.07.05.2018 in I.A.No.317 of 2016 in O.S.No.79 of 2016 of the Junior Civil Judge, Jadcherla.

2. Petitioners herein are the defendants in the suit.
3. Respondents/plaintiffs filed the said suit against the petitioners for perpetual injunction restraining the petitioners from interfering with their possession and enjoyment of the plaint schedule properties. One of the plaint schedule properties is an item consisting of Ac.4.24 gts in survey No.275/1/A of Peddadiralla Village, Jadcherla Mandal of Mahabubnagar District.
4. Along with the said suit, the respondents filed I.A.No.317 of 2016 under Order XXXIX Rules 1 and 2 of CPC and sought a temporary injunction restraining the petitioners from interfering with their alleged peaceful possession and enjoyment of the plaint schedule properties. It was their contention that all the plaint schedule properties are ancestral properties and were acquired by the husband of the 1st respondent, that he died 17 years prior to the filing of the suit, that after his death, mutation was affected in

the revenue records in the name of the respondents and pattadar pass book and title deeds were also issued to them. They contended that the petitioners, who are distantly related to them and who have no right, title or interest in the suit schedule properties, asked the respondents to give the suit land to them on lease, and when the respondents refused, they threatened to dispossess them from the subject lands.

5. Petitioners 1 to 3 filed a counter affidavit opposing the said application. They contended that though the husband of the 1st respondent was the owner of Ac.4.24 gts in survey No.275/1/A, he sold the same to the 3rd petitioner. Petitioners denied that there was mutation in the revenue records of the name of the respondents or that pattadar pass book and title deeds were issued in favour of the 1st respondent. All the allegations leveled by the respondents in I.A., against the petitioners were denied including the contention of the respondents that they were in peaceful possession of the plaint schedule properties.

6. In the Court below, respondents marked Exs.P1 to P6 and petitioners marked Exs.R1 to R11.

7. By order dt.07.05.2018, the Court below allowed I.A.No.317 of 2016 and granted *ad-interim* injunction in favour of the respondents against the petitioners, restraining the petitioners from interfering with the peaceful possession and enjoyment of

the respondents over the suit schedule property till disposal of the suit.

8. It held that only the extent of Ac.4.24 gts in Sy.No.275/1/A was the subject matter of the I.A.; that Ex.P-6, R-1 to R-7 show respondent No.1 as a pattadar of the above land; that though petitioners relied on Exs.R-8 and R-9 panchanamas prepared on 29.11.2016 and 05.03.2016 stating that they are in possession of the above land, these were not mentioned in the counter-affidavit; and therefore the respondent No.1 had proved her possession but the petitioners did not prove their possession. It also held that issuance of pattadar pass book to the 1st respondent also coupled with mutation of her name in the revenue records proves her possession and if interim injunction is not granted restraining the petitioners from interfering with respondent No.1's peaceful possession of the plaint schedule property, she would be put to irreparable loss.

9. Assailing the same, petitioners filed C.M.A.No.5 of 2018 before the II Additional District Judge (FTC), FAC VII Additional District Judge, Mahaboobnagar. The said appeal was also dismissed on 25.09.2018. The said Court held that Exs.P-1 to P-3 show that respondent No.1's name is recorded as pattadar and 1-B was also issued in her favour and there is a presumption under Section 6 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short "the Act") in favour of the entries made therein. It also relied on the decision in **M.Varthamma and**

others Vs. Kannappa (Died) and others¹ and held that there is a presumption that respondent No.1 has title to the said property in view of Exs.P-1 and P-3. It further held that petitioners failed to file any scrap of paper before the Court evidencing that their ancestor purchased Ac.2.00 of land from husband of respondent No.1 and such a plea was not taken in the counter-affidavit filed before the trial Court and that they should have given details as to when and for what consideration they purchased it and how such consideration was paid. It therefore held that such a plea cannot be raised for the first time before it in the C.M.A. It further observed that Ex.P-6 is a bunch of pahanis filed by respondent No.1 which was issued on 04.11.2016, but Exs.R-1 to R-7 were obtained on 12.06.2017 and there was no plausible explanation offered by the petitioners how the entries in Ex.P-6 in respect of Ac.4.24 gts were changed between 04.11.2016 and 12.06.2017 and therefore it held that it would rely on Ex.P-6 rather than Exs.R-1 to R-7. It discarded the panchanamas Exs.R-8 and R-9 in view of the entries in Ex.P-6. Though the petitioners relied upon an order passed by the Joint Collector staying the operation of an order of the Tahsildar, Jadcherla, it observed that the Joint Collector had not set aside the recording of the name of the respondent No.1 in respect of the above land in Ex.P-6; and therefore, the respondent No.1 alone was in possession of the above property on the date of the suit and was rightly granted temporary injunction by the trial Court.

¹ 2013(5) ALT 241

10. Assailing the same, this Revision is filed.

11. Learned counsel for the petitioners sought to contend that findings recorded by the trial as well as the lower appellate Court are unsustainable; that petitioners had adduced evidence that they were in possession of Ac.2.00 of land in Sy.No.275/1/A and the panchanamas Exs.R-8 and R-9 also showed their possession; and therefore the orders of the Courts below require to be set aside.

12. Admittedly, the 1st respondent was issued pattadar pass book Ex.P-1 and also 1-B RoR (Ex.P-3) and Ex.P-6 pahanis show her possession of the entire Ac.4.24 gts in Sy.No.275/1/A. Therefore there is a presumption under the Act in their favour that the entries therein are genuine and that she has title thereto. Without any pleading in the trial Court, petitioners cannot contend for the first time in the C.M.A. that their ancestor purchased Ac.2.00 in the above Survey Number from the husband of the respondent No.1. They had not given any details about date of purchase, consideration, mode of its payment etc. As rightly observed by the lower appellate Court the pahanis under Ex.P-6 were issued showing name of the respondent No.1 as pattedar and possessor on 04-11-2016, but without any plausible reason entries were changed in Exs.R-1 to R-7 issued on 12-06-2017. Moreover, Exs.R-8 and R-9 panchanamas filed by petitioners had not been issued to them in any proceeding after

prior notice to the respondents and any such panchanama cannot therefore bind the respondents.

13. In my opinion, the trial Court as well as the lower appellate Court correctly appreciated the evidence on record and granted temporary injunction in favour of respondent No.1 and the findings recorded in their orders do not warrant interference in exercise of limited jurisdiction conferred on this Court under Article 227 of the Constitution of India.

14. Accordingly, the Civil Revision Petition is dismissed. However, the trial Court shall decide the suit uninfluenced by any observations/findings in its order or in the order in the C.M.A. or this order. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date : 13-02-2019.
gra/Vsv