

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.233 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.06.09.2018 passed in CMA.No.10 of 2017 by the V Additional District Judge at Kothagudem, reversing the order dt.01.08.2017 in I.A. No.69 of 2017 in O.S. No.67 of 2017 of the Principal Junior Civil Judge Court, Kothagudem.

2. The petitioner herein is the plaintiff in the said suit.
3. She filed the said suit for a declaration that gift settlement deeds Document Nos.1212 of 2011, 1211 of 2011 and 1364 of 2011 dt.20.07.2011, 20.07.2011 and 01.08.2011, respectively, with regard to 'A' to 'C' schedule properties are not binding on her and to consequently cancel the same and also for a perpetual injunction restraining the respondents 1 to 3 from in any way from interfering or obstructing or alienating 'A' to 'C' schedule property being enjoyed by her.
4. Along with the suit, she filed I.A. No.69 of 2017 invoking Order XXXIX Rule 1 and 2 restraining the respondents from alienating or interfering or obstructing her peaceful possession and enjoyment of the suit schedule properties.
5. Counter affidavit was filed by the respondents opposing the same.
6. Before the said Court, the petitioner filed Exs.P.1 to P.12. Respondents filed Exs.R.1 to R.18.

7. By order dt.01.08.2017, the trial Court granted temporary injunction restraining the respondents 1 to 3 from interfering with the peaceful possession and enjoyment of the petitioner over the suit schedule properties, pending disposal of the suit.

8. Challenging the same, respondents filed CMA.No.10 of 2017 before the V Additional District Judge at Kothagudem, who allowed the said appeal and set aside the order dt.01.08.2017 passed in I.A. No.69 of 2017.

9. Challenging the same, this Revision is filed.

10. In brief, the case of the petitioner is that she and the respondents are children of late Lingam Guruva Reddy; that her marriage was settled with one Yeruva Muralidhar Reddy in 1995; and in consideration of her marriage, Ac.1.00 of land in Sy.No.217/A (217/A/1) situated at Vepalagadda, Hamlet of H/o.Sujathanagar village and Mandal was given to her on 01.06.1996; and the giving of the said land was acknowledged by her father, which was known to the respondents. She alleged that since 1996 her name was recorded in all revenue records as owner of the said land. She alleged that respondents took advantage of her temporary absence and obtained registered gift settlement deeds mentioned above with regard to Ac.0.24 gts, Ac.0.20 gts. and Ac.0.24 gts., respectively from her father and that she came to know of it in February, 2017.

11. She stated that she gave a complaint to Tahsildar, Kothagudem and again to the Tahsildar, Sujathanagar when respondents were making efforts to get their names incorporated in the revenue records behind her back; that on 12.03.2017 respondents made efforts to fix stones in the Ac.1.00 of land belonging to her and tried to encroach Ac.0.6gts., ('A' schedule property),

Ac.0.7gts., ('B' schedule property) and Ac.0.7gts., ('C' schedule property) in Sy.No.217/A/1, which had been given to her by her father.

12. The case of the respondents is that petitioner is their sister and her marriage was no doubt performed in 1995, but they denied that at the time of her marriage she was given by their father Ac.1.00 of land towards Pasupukumkuma. They denied execution of any document by their father on 01.06.1996 admitting the said gift in favour of the petitioner. They denied that petitioner is in possession and enjoyment of the Ac.1.00 of land in Sy.No.217/A/1. They contended that their father had Acs.3.32 gts., in the said survey number; that the eldest brother Nagi Reddy got and registered document executed by their father for an extent of Ac.1.00 of land in the name of one Suguna on 30.03.2011, but the said purchaser was never in possession of the land and Nagi Reddy was in possession of the said land. They alleged that their father distributed his entire land into six bits and one bit on the Southern side was given to Nagi Reddy, and 3 other bits of extent Ac.0.20 gts., Ac.0.24 gts., and Ac.0.20 gts. were given to respondent Nos.2, 1 and 3. He also stated that petitioner and another brother one L.Venkat Reddy were given under two separate gift deeds Document No.1320 of 2011, Ac.0.20 gts., and Ac.0.24 gts., by another Document No.1321 of 2011. They contended that the petitioner suppressed these facts and filed the suit.

13. The trial Court in its order dt.01.08.2017 in I.A. No.69 of 2017 considered the contentions of the parties and the evidence on record and held that Exs.P.4 to P.9 pahanies from Fasli 1420 to 1426 show the possession of the petitioner over the suit schedule property. It also observed that land conversion proceedings relate to Ac.0.20 gts., of land do not show that besides Ac.0.20 gts., petitioner is not having possession of Ac.1.00 of land.

14. But the lower appellate Court in its order dt.06.09.2018 in CMA.No.10 of 2017 took a view that father of the parties Guruva Reddy had purchased Acs.3.32 gts. of land on 25.07.1977 of which Ac.1.00 was sold to Suguna on 30.03.2011 leaving Acs.2.32 gts.; that entries in Revenue record Exs.P.4 to P.16 which show the possession of the petitioner, do not confer or take away existing title of the property; that Ex.R.5 shows that Ac.0.20 gts. was given to the petitioner also by her father and that she had converted the same from agriculture to non agriculture as per Ex.R.13; and under Ex.R.15 she had executed a sale deed dt.11.08.2016 in favour of the third parties. It therefore held that the petitioner did not come with clean hands.

15. In this Revision, counsel for the petitioner contended that possession on the date of the suit is a *sine qua non* for grant of temporary injunction under Order XXXIX Rule 1 and 2 CPC apart from *prima facie* case, balance of convenience and irreparable injury; and Exs.P.4 to P.9 are found by both the Court as proving the possession of the petitioner over the Ac.1.00 of land she claimed to have been gifted to her by her father covering the period 2010 to 2016, and so the lower appellate Court ought not to have reversed the finding of the trial Court and set aside the interim injunction granted in favour of the petitioner.

16. The counsel for the respondents refuted the said contentions and supported the order passed by the Court below.

17. I have noted the contentions of both the sides.

18. The petitioner is contending that Ac.1.00 of land in Sy.No.217/A/1 was given to her as Pasupukumkuma at the time of her marriage in 1995 and she is in possession thereof. Exs.P.4 to P.9, which are digital pahanies for

the period from 2010 to 2016 admittedly show her possession over the said land.

19. No doubt, these pahanies do not confer or take away the existing title of the property as held by the lower appellate Court, but they *prima facie* prove the possession of the Ac.1.00 of land by the petitioner. It may be that Ex.R.5 shows that petitioner's father had given her Ac.0.20 gts. of land in Sy.No.217/A/1, but it is quite possible that this transfer is in addition to what was given to her allegedly at the time of her marriage by her father; and so Ex.R.15 sale deed dt.11.08.2016 executed by her cannot come in the way of the petitioner owning the other Ac.1.00 of land allegedly gifted to her.

20. Whether there was such a gift of Ac.1.00 of land as Pasupukumkuma at the time of petitioner's marriage or not by her father is a matter of proof and after trial, a conclusion can be drawn on the basis of the evidence adduced while deciding the suit.

21. *Prima facie* Exs.P.4 to P.9 probablise the said fact. Therefore, when there is no document filed by the respondents in support of their alleged possession of plaint schedule properties, the lower appellate Court ought not to have set aside the order dt.01.08.2017 in I.A. No.69 of 2017. It's conclusion that the petitioner did not come to the Court with clean hands is also not warranted *prima facie*.

22. Accordingly, this Revision is allowed; order dt.06.09.2018 in CMA. No.10 of 2017 of V Additional District Judge at Kothagudem is set aside and the order dt.01.08.2017 in I.A. No.69 of 2017 in O.S. No.67 of 2017 of the Principal Junior Civil Judge, Kothagudem is affirmed.

23. However, the trial Court shall decide the suit uninfluenced by any observations made by in its order in I.A. No.69 of 2017 or by the lower appellate Court in CMA.No.10 of 2017 or by this Court in this Revision. There shall be no order as to costs.

24. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11.07.2019
LSK



