

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.307 of 2019

ORDER:

Heard the learned counsel for the petitioners.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.07-08-2012 in I.A.No.236 of 2012 in O.S.No.142 of 2007 of the Additional Junior Civil Judge at Jangaon.

3. The said suit was filed for perpetual injunction against the petitioners by the respondent. He also filed I.A.No.355 of 2007 for interim injunction under Order 39 Rules 1 and 2 CPC and such interim injunction was granted on 12-07-2007 until further orders. The suit was dismissed for default and again restored on 28-10-2010 on the filing of I.A.No.219 of 2010 by the respondent/plaintiff.

4. The respondent then filed I.A.No.236 of 2012 seeking police aid to implement the injunction order granted on 12-07-2007 in I.A.No.355 of 2007 in O.S.No.142 of 2007.

5. Petitioners filed counter opposing the said application and contended that by creating false documents and obtaining illegal mutation, the respondent had filed the suit; that petitioners challenged the same in an appeal before the R.D.O. and it was allowed; thereafter, the respondent filed Writ Petition in the High Court and the Court had granted interim direction directing the revenue authorities to conduct

de nova enquiry for illegal possession and the petitioners cannot be allowed to cultivate the subject land which is a fallow land with the help of the police.

6. By order dt.07-08-2012, the Additional Junior Civil Judge, Jangaon, allowed I.A.No.236 of 2012. After referring to the contentions of the parties, the Court observed that even if the parties have approached the High Court with regard to the granting of patta in respect of the suit land, the interim injunction granted on 12-07-2007 in I.A.No.355 of 2007 is still in force and so the petitioner is entitled to police aid for implementation of the said interim order. It relied upon a judgment of this Court in **P.Sivaram Prasad Vs. Bala Tripura Sundari**¹.

7. Assailing the same, this Revision Petition is filed.

8. Learned counsel for the petitioners contended that once the suit has been dismissed for default, any interim order granted prior to such dismissal would perish with same order of dismissal of suit and would not get revived, if the suit is restored subsequently.

9. This contention is without any merit in view of the decision of the Supreme Court in **Vareed Jacob Vs. Sosamma Geevarghese and others**², wherein the Supreme Court categorically held that on restoration of the suit dismissed for default, all interlocutory matters shall stand restored, unless the order of restoration says to the contrary; and that interlocutory orders passed prior to the dismissal of the suit for default

¹ 2011 (6) ALD 122

² (2004) 6 S.C.C. 378

would stand revived. It observed that once the dismissal is set aside, the plaintiff must be restored to the position in which he was situated when the Court dismissed the suit for default unless the Court expressly or by implication excludes the operation of the interlocutory order passed during the period between dismissal of the suit and the restoration.

10.In view of the said legal position, I see no merit in the Revision Petition. It is accordingly dismissed. No costs.

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

Date: 27-02-2018
kvr

JUSTICE M.S.RAMACHANDRA RAO

