

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. No.481 of 2019

ORDER:

This Revision is filed challenging the order dt.09.08.2018 passed in CMA. No.77 of 2017 by the XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri, confirming the order dt.28.04.2017 passed in I.A. No.868 of 2016 in O.S. No.186 of 2016 of the Principal Junior Civil Judge at Medchal.

2. The petitioners herein are the defendants in the suit.
3. The first respondent filed the suit against the petitioners for perpetual injunction restraining the petitioners from interfering with his peaceful possession and enjoyment over the suit schedule property. The suit schedule property is described as extent 54 square yards containing a house No.1-86/3, situated at Nizampet village, Quthubullapur Mandal, Ranga Reddy District.
4. The first respondent claimed that the suit schedule property is ancestral property of the first respondent and that it falls in the Gramakantam of the Nizampet village, and he is in peaceful possession from the time of his ancestors. According to him, the Grampanchayat of Nizampet village allotted house No.1-86/3 in his favour and he later obtained construction permission on 31.03.2014 for construction of a house and paid construction permission fee and house No.1-86/3 was allotted. He alleged that the petitioners, who had no concern with the suit schedule property, tried to grab his property on 27.08.2016 and 03.09.2016 and so he filed the suit.

5. The first respondent also filed I.A. No.868 of 2016 under Order 39 Rule 1 and 2 read with Section 151 CPC., restraining the petitioners and the second respondent from interfering with his peaceful possession and enjoyment over the suit schedule property.

6. The petitioners filed a counter in the said I.A., as well as a written statement in the suit denying the claim of the first respondent.

7. They contended that the house No.1-86/3 is non-existence. They also contended that the second petitioner is the younger brother of the first petitioner and he is the absolute owner of house No.1-86/1, admeasuring 429 square yards, situated at Gramakantam of Nizampet village; that since there was interference by the first respondent and others, O.S. No.979 of 2014 was filed before the Senior Civil Judge, R.R.District for perpetual injunction. The said suit was transferred to the VII Additional Senior Civil Judge, Medchal and renumbered as O.S. No.373 of 2015; that the first respondent is the 4th defendant in the said suit; that he remained *ex parte* and filed the present suit as a counterblast to the said suits. It is contended that the sole intention of the first respondent is to grab a part of the property, which is subject matter of the O.S. No.373 of 2015, in collusion with the second respondent/D3. It is contended that they were paying the property tax for previous 8 years for the construction made by the second petitioner and such construction was made by obtaining permission in 2008. According to them, water and electricity connections were also obtained and the petitioners were in occupation of the house on the land admeasuring 429 square yards, which was given house No.1-86/1. They disputed the possession of the first respondent and denied any interference. They contended that the first

respondent is mischievously claiming property of the petitioners by mentioning fictitious house No.1-86/3 and 1-86/A.

8. By order dt.28.04.2017, the Principal Junior Civil Judge at Medchal allowed the I.A. No.868 of 2016. The trial Court held that Ex.P1 to P3 and P6 and P7 *prima facie*, established the lawful possession of 1st respondent over the suit schedule property. It also held that the property involved in O.S. No.373 of 2015 is different from the property which is involved in O.S. No.186 of 2016 as can be seen from the schedule of the boundaries and so, the first respondent was entitled to interim injunction.

9. Assailing the same, the petitioners filed CMA. No.77 of 2107 before the XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri. The said appeal was also dismissed on 09.08.2019 observing that the petitioners did not move any application for appointment of Advocate Commissioner to visit the schedule property to show that it is a part and parcel of the 249 square yards for which the second petitioner in O.S. No.373 of 2015 is claiming before the VII Additional Senior Civil Judge, Medchal, against the first respondent and others. It also observed that the documents filed by the parties *prima facie*, show that the first respondent is in occupation of house bearing No.1-86/3 while the second petitioner is in occupation of house covered by 1-86/1. It also doubted the service of notice in the appeal on the first respondent and confirmed the findings of the trial Court.

10. Challenging the same, present Revision is filed.

11. Counsel for the petitioners contended that the Courts below did not consider Exs.R14 and R15 and the material produced by the petitioners. She also contended that evidence filed by the petitioners would establish their possession and enjoyment of the suit schedule property and that the first respondent is trying to grab the property belonging to the petitioners by filing the suit.

12. A perusal of the judgment of the trial Court shows that it is referred to Ex.R14 filed by the petitioners, which is report of the Deputy Collector, Tahsildar, Quthbullapur along with the Mandal Surveyor report. The trial Court noted that this report shows that 430 square yards belongs to the second petitioner and it falls in the Gramakantam and it is situated towards the South-Western side of the said Gramakantam land near the land in Sy.No.292 and 293. It further referred that Ex.P4, P5 and P8 Memo of Deputy Tahsildar, Quthbullapur and certificate of Executive Officer of Nizampet Grampanchayat along with the Mandal Surveyor's report and noted that in those exhibits it is shown that the suit schedule property is situated towards North-Western corner of the Gramakantm land near to the land in Sy.No.407 and 409. It thus concluded that the land claimed by the first respondent is different and distinct from the land claimed by the second petitioner in O.S. No.373 of 2015. No exception can be taken to these objections by the order of the trial Court as petitioner could not establish that they are incorrect.

13. Though the petitioners contended that the respondents are trying to grab the second petitioner's property, which is subject matter of O.S. No.373 of 2015 admittedly no Advocate Commissioner was got appointed by the petitioners to localize the property, which is the subject matter of O.S.

No.186 of 2016. Therefore, *prima facie*, there is no material to support the stand of the petitioners.

14. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court cannot review or re-appreciate the evidence when the findings of the Courts below are not perverse and the Court below did not ignore any material evidence. So the findings recorded by the Courts below cannot be interfered with. Therefore, I do not find any merit in the Revision.

15. However, the Court below shall decide the suit uninfluenced by the observations made in I.A.No.868 of 2016 in O.S. No.186 of 2016 or CMA. No.77 of 2017 of the XVI Additional District and Sessions Judge, R.R.District at Malkajgiri or made by this Court in this Revision.

16. In the result, this Revision Petition is dismissed accordingly. There shall be no order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 17.04.2019.
LSK