

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

CRP.No.1142 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.05.10.2018 in CMA.No.6 of 2016 of the Principal Senior Civil Judge, Narayanapet reversing the order dt.11.04.2016 in I.A.No.58 of 2014 in O.S.No.21 of 2014 of the Junior Civil Judge, Kodangal.

2. Petitioner herein is the 1st defendant in the above suit.
3. 1st respondent/plaintiff filed the said suit against the petitioner and another claiming that she is absolute owner and possessor of land admeasuring Acs.7.09 gts., in survey No.177/1 of Devarfasalwad Village of Doualthabad Mandal, Mahabubnagar District. She contended that she inherited the said land from her ancestors after a partition and mutation was also made of her name in the revenue records and title deeds, ROR and pahani patrikas show her possession. She alleged that the petitioner and other defendant have no concern with the suit schedule property but they are abutting land owners; and taking advantage of the fact that the 1st respondent is living alone, they are trying to occupy her land by hook or crook. She also mentioned

that the petitioner is the son of cousin of 1st respondent and on 09.06.2014 they tried to grab the 1st respondent's land.

4. Written statement was filed by the petitioner opposing the suit claim.

5. Along with the suit, 1st respondent filed I.A.No.58 of 2014 under Order XXXIX Rule 1 and 2 CPC seeking temporary injunction against the petitioner in respect of the suit schedule property alleging that she would be otherwise dispossessed there from.

6. Counter affidavit was filed by the petitioner contending that 1st respondent has neither ownership nor possession. It is contended that the father of the petitioner, husband of the 1st respondent and one Jagannath Reddy are real brothers, having joint family properties; that the suit schedule property is part of their joint family properties; and in 2011, there was a partition affected among them. According to him, in the said partition, the suit schedule property along with other lands fell to his share. He claimed that his name was entered in the revenue records and he raised a Mango garden therein.

7. Before the trial Court, 1st respondent filed Exs.P1 to P14 and petitioner filed Exs.R1 to R4.

8. The trial Court dismissed the said I.A., stating that the documents filed did not indicate the boundaries of the suit schedule land.

9. Challenging the said order, 1st respondent filed CMA No.6 of 2016 before the Senior Civil Judge, Narayanpet.

10. By order dt.05.10.2018, the said CMA was allowed. The lower Appellate Court held that Ex.P1 to P14 filed by the 1st respondent clinchingly establishes that the 1st respondent is pattadar and possessor of the suit schedule property which is in survey No.177/1 and Exs.R1 to R4 filed by the petitioner shows that petitioner is pattadar and possessor of land in survey No.177/A. It also referred to Exs.R5 to R15 filed by the petitioner before it and observed:

“Ex.R5 is the proceedings of the Thasildhar, Dhoulthabad in which the petitioner land was shown as 177/AA. The proceedings which were marked as Ex.R5 is not dated and not sealed. Ex.R5 is the scanned ROR but it was not dated and moreover, Ex.R7 is the ROR not pertaining to the suit schedule property. Ex.R8 to Ex.R10 are the pahanies did not pertaining to the suit schedule property. Ex.R12 the ROR in which the respondent was shown as the pattadar to suit schedule Sy.No.177/AA.”

11. It then concluded that these documents also do not reveal that the petitioner is the pattadar and possessor of the

land in survey No.177/1. It also found fault with the order of the trial Court and observed that in the counter filed by the petitioner, he never disputed the boundaries of the plaint schedule property but had only claimed that it fell to his share. It also referred to certified copy of the plaint O.S.No.43 of 2016 filed by the petitioner claiming perpetual injunction wherein he had described the boundaries in the suit schedule different from those mentioned in the instant suit.

12. Assailing the same, this Revision is filed.

13. Though counsel for petitioner sought to contend that there is a partition among the family members and the suit schedule property was allotted to the petitioner in the said partition, admittedly, no evidence of such partition has been adduced in the trial Court or in the lower Appellate Court. His further contention, that if the partition is disbelieved, then injunction cannot be granted to a co-owner, also cannot be accepted, because it is the plea of the 1st respondent that it is her property which she got under a partition and the pahanies Exs.P3 to P14 from 1997-98 till 10.06.2014 show her possession in respect of the plaint schedule property. Also the lower Appellate Court had perused the plaint in O.S.No.43 of 2016(Ex.P15) filed by the petitioner seeking

perpetual injunction wherein different boundaries were mentioned by the petitioner for the land claimed by him.

14. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India with the order of the lower Appellate Court.

15. Accordingly, this Civil Revision Petition is dismissed at the admission stage. However, the trial Court shall decide the suit uninfluenced by any observations made by it in the order dt.11.04.2016 in I.A.No.58 of 2014 or in the order dt.05.10.2018 in CMA.No.6 of 2016 or by the order passed in this Revision. No order as to costs.

16. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

01st May, 2019.

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