

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

CRP.No.2284 of 2017

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.11.2016 in CMA.No.179 of 2014 of the Principal District Judge, Ranga Reddy District confirming the order dt.26.08.2014 in I.A.No.191 of 2013 in O.S.No.78 of 2013 of the Junior Civil Judge, Cyberabad at Hayathnagar.

2. Petitioners herein are defendant No.s 1 & 2 in the said suit.
3. The 1st respondent herein filed the said suit against the petitioners and 2nd respondent for perpetual injunction restraining the petitioners and the 2nd respondent from interfering with the alleged peaceful possession and enjoyment of the 1st respondent over the suit schedule property.
4. It is contended by the 1st respondent that he is the lawful owner and possessor of the agricultural land in Survey No.372/A admeasuring Acs.7.09 gts. at Koheda Village, Hayathnagar Mandal, Ranga Reddy District, having purchased it from its original owner under an oral sale. He alleged that he has been in continuous and exclusive possession and enjoyment of the same and that he was raising crops in the said land. He contended that when mutation was not made by the vendor in the name of the 1st respondent, 1st respondent had filed a suit for declaration of title, perpetual injunction and correction of records against his vendor,

which has been numbered as O.S.No.482 of 2012; that petitioners herein had their own land abutting to the suit schedule land towards northern side and they are trying to occupy his land basing on certain wrong orders passed by the Tahsildar, Hayathnagar Mandal. He also alleged that petitioner came to the suit land on 18.03.2013 and caused damage to the bore-well of the 1st respondent and tried to remove a cattle shed therein.

5. Written statement was filed by the petitioners refuting the said allegations. They disputed the title of the 1st respondent to the suit schedule property and also denied that they tried to interfere with the possession and enjoyment of the 1st respondent over the said property. They contended that the vendor of the 1st respondent had executed a registered Sale Deed dt.22.03.2001 along with one Narahari Rao in favour of the 2nd petitioner for an extent of Acs.4.00 gts. in Survey No.372 and that they also executed another sale deed for Ac.1.31 gts in Survey No.372 on 30.06.2008 in favour of the 1st petitioner. They alleged that later mutation was also granted in their favour, and pattadar pass books and title deeds were also issued to them; that they are the lawful purchasers of the above extent of land; and having obtained an *ad-interim* injunction, the 1st respondent wanted to occupy their property.

6. Along with the suit, 1st respondent filed I.A.No.191 of 2013 under Order XXXIX Rules 1 and 2 CPC against the petitioners reiterating the contents of the plaint.

7. Petitioners filed a counter affidavit opposing grant of temporary injunction to the 1st respondent.

8. Before the trial Court, the 1st respondent marked Exs.P1 to P15 and the petitioners marked Exs.R1 to R18.

9. By order dt.26.08.2014, the trial Court allowed I.A.No.191 of 2013. It observed that the 1st respondent had filed pahanies from 1997-98 till 2014, which *prima facie* showed his possession over the suit schedule property. It also opined that since the sale of the petitioners was in 2001, long after the oral sale pleaded by the 1st respondent, that factor would be considered at a later stage. It referred to the documents filed by the petitioners and noted that only two of such documents for Fasli 1422-1423 pertained to survey No.372/A and the rest of the documents do not show *prima facie* possession of the petitioners over the suit schedule property. It also observed that pattadar passbooks had been issued in 2012, but an appeal is pending against the same.

10. Assailing the same, petitioners filed CMA.No.179 of 2014 before the Principal District Judge, R.R. District at L.B.Nagar.

11. By order dt.08.11.2016, the lower Appellate Court dismissed the said Appeal. It also considered the documentary evidence adduced by both sides and affirmed the findings of the trial Court. It relied on Ex.P12 written statement in O.S.No.482 of 2012 on the file of the Special Judge for trial of cases under SCs/STs(POA) Act, 1989-cum-Additional District Judge, Ranga Reddy District

filed by the 1st respondent against the original owner, wherein the original owner had admitted the oral sale and possession of the 1st respondent over the suit schedule property.

12. Assailing the same, this Revision is filed.

13. Counsel for the petitioner sought to contend that both the Courts below have not properly appreciated the evidence on record, that they ought to have taken note of the registered Sale Deeds in favour of the petitioners, and the fact that the 1st respondent is relying on an oral sale, 36 years prior to the suit.

14. Counsel for the 1st respondent refuted the said contentions and supported the order passed by the Court below.

15. Grant of interim injunction under Order XXXIX Rule 1 and 2 CPC is a discretionary remedy and the plaintiff has to establish that *prima facie* case and balance of convenience is in his favour, and if relief of temporary injunction is not granted, in the event of success in the suit, irreparable injury would be caused to him.

16. This being a suit for injunction, *prima facie*, title to the property is only incidentally in issue and in applications under Order XXXIX Rules 1 and 2 CPC possession, on the date of filing of the suit, is also a relevant criteria.

17. Both the Courts below on the appreciation of evidence have come to the conclusion that the material filed by the 1st

respondent establishes his possession over the suit schedule property on the date of filing of the suit.

18. These concurrent findings of fact, which are based on appreciation of evidence, in my considered opinion, do not warrant any interference by this Court in exercise of its power under Article 227 of the Constitution of India.

19. Therefore, this Civil Revision Petition fails and it is dismissed. However, the trial Court is directed to decide the suit uninfluenced by its observations or findings in I.A.No.191 of 2013 or by the Prl. District Judge in CMA.No.179 of 2014 or by this Court in this Revision. Since the suit is of the year 2013, the Court below shall expedite the disposal of the suit. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

27th June, 2019.

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