

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.M.A. No.734 of 2019

ORDER:

Heard Sri P. Venkat Reddy, learned counsel for the petitioner and Sri N. Ravi Prasad, learned counsel appearing for the Caveator.

This Appeal is filed challenging the order dt. 18.06.2019 in I.A. No.760 of 2019 in O.S. No.136 of 2019 of the Senior Civil Judge at Sangareddy.

The appellant herein is defendant in the suit.

The respondent/plaintiff filed the said suit against the appellant for perpetual injunction restraining the appellant from interfering with the alleged possession and enjoyment of the suit schedule property of Ac.2.00 gts in Patighanpur village, Pattancheruvu Mandal, Sangareddy District sub-division in Sy. No.571.

It is the case of the respondent in the suit that it has acquired the suit schedule property for development under a registered development agreement-cum-general power of attorney dt. 30.03.2019 from its lawful owners who are sons of late Kummari Rajaiah; that they are in physical possession of the said property; and on 26.04.2019, the appellant tried to obstruct the work being carried on the said land by the respondent employees. It is alleged that again on 30.04.2009, the appellant came to the suit schedule property along with a mob and tried to obstruct the work and occupy the suit schedule property.

Along with the suit, the respondent filed I.A. No.760 of 2019 under Order XXXIX Rule 1 and 2 CPC seeking temporary injunction restraining the appellant from interfering with its alleged peaceful possession and enjoyment of the suit schedule property by reiterating the contents of the plaint.

Counter-affidavit was filed by the appellant opposing the said application and denying the possession and enjoyment of the respondent over the suit schedule property. It is contended that the persons who executed the development agreement-cum-general power of attorney dt. 30.03.2019 namely Kummari Veeraiah and others were not in possession of the property at any point of time. It is alleged that the predecessors in title of the respondent suppressed about the pendency of O.S. No.168 of 2013 before the Principal Junior Civil Judge at Sanga Reddy and created the development agreement-cum-general power of attorney in favour of the respondent. It is contended that the respondent intended to occupy the plaint schedule property with the help of security people. It was also denied that the appellant had obstructed the work being carried out by the employees of the respondent.

It is also contended by the appellant that in O.S. No.168 of 2013, Kummari Veeraiah and others also filed I.A. No.941 of 2013 against the father of the appellant by name Sale Rajaiah seeking temporary injunction pending suit; that the said I.A. No.941 of 2013 was allowed on 14.10.2014; and the said order was set aside on 29.12.2017 in CMA No.29 of 2014 by the Special Judge for Trial of Offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional District & Sessions Judge, Medak at Sanga Reddy.

It is contended that certain findings have been recorded therein against Kummari Veeraiah and others regarding their possession; that Sale Rajaiah is no more; and the appellant is the owner and possessor of Ac.3.00 gts of land in Sy. No.571/E which they had purchased under registered sale deed dt.07.01.1990. According to him, the khasra

pahani in Sy. No.571 shows Ac.5.00 gts of land was owned and possessed by grandfather of the appellant and after his demise appellant's father Rajaiah got Ac.1.26 gts and so Rajaiah would be the owner of Ac.4.26 gts in Sy. No.571/lu.

It is alleged that there were directions given by the District Collector to the Revenue Divisional Officer and Tahsildar to enquire into the matter and the Tahsildar conducted a detailed enquiry and gave a report on 06.07.2013 to the Revenue Divisional Officer, Sanga Reddy, and in that report the physical possession of appellant's father was recorded. According to the appellant, there are no boundaries in the document relied upon by Kummari Veeraiah and others and they have shown wrong boundaries with an intention to occupy the land belonging to Sale Rajaiah.

Before the court of the Senior Civil Judge, Sanga Reddy, the respondent marked Exs.P-1 to P-20, while the appellant marked Exs. R-1 to R-11.

By order dt.18.06.2019, the court below allowed I.A. No.760 of 2019 and granted temporary injunction in favour of the respondent restraining the appellant from interfering with the peaceful possession and enjoyment of the respondent over the suit schedule property till the disposal of the suit.

The court below held that O.S. No.168 of 2013 had itself been dismissed for default and any interim order passed in I.A. No.941 of 2013 or in C.M.A. No.29 of 2014 arising out of the said suit has no legal effect. Referring to Ex.R-4, a letter addressed by the Tahsildar to the Revenue Divisional Officer referring to discrepancies in the total extent of land in Sy. No.571 in the pahanies and in the ROR, the court below held that Ex.R-4 is in the year 2013, and there is nothing to show

subsequently any steps were taken on the said letter of the Tahsildar. It observed that in pahani for the year 1989-90, the name of Kummari Rajaiah was recorded as pattadar for the land in Sy. No.571 and that the total extent of Sy. No.571 as per Ex.R-4 is Ac.11.17 gts of which the respondent is claiming only Ac.2.00 gts. It then relied on Ex.P-5 pahani dt. 19.02.2019, Ex.P-4 registered development agreement-cum-general power of attorney filed by the respondent and certain photographs, to record that the respondent is in possession and enjoyment of the suit schedule property on the date of filing of the suit.

Assailing the same, this appeal is filed.

Counsel for the appellant firstly contended that the predecessors in title of the respondent had relied only on an agreement of sale wherein the boundaries were not correctly given and the respondent cannot seek to get an injunction without his predecessors having right, title and interest of the suit schedule property.

This being a suit for injunction, title to property is only incidentally in issue, and it is necessary for the respondent to establish possession of the suit schedule property on the date of filing of the suit. **(Balkrishna Dattatraya Galande v. Balkrishna Rambharose Gupta¹)**. Therefore which of the parties has a better title is not at the moment very significant.

Coming to the order dt.29.12.2017 in CMA No.29 of 2014 of the V Additional District Judge, Medak at Sanga Reddy, on which much reliance is placed by the Counsel for the appellant, since the said CMA arose out of an order passed on 14.10.2014 in I.A. No.941 of 2013 in O.S. No.168 of 2013 filed by the predecessors in title of the respondent against the father of the appellant, and since the said suit had itself

¹ AIR 2019 SC 933

been dismissed for default, the said order would not have any bearing and no reliance can be placed on it by the appellant.

The documentary evidence filed by both the parties indicates that the names of the predecessors in title of the respondent are recorded in the revenue records to an extent of Ac.2.00 gts in Sy. No.571 and according to the appellant, his father had Ac.4.26 gts in the said survey number. Admittedly, Ex.R-2 indicates that the land in Sy. No.571 is atleast Ac.11.17 gts, though as per ROR, the extent is said to be Ac.17.27 gts. Within this extent of Ac.11.17 gts, it is possible that both the respondent's predecessors as well as the appellant might have possession of Ac.2.00 gts and Ac.4.00 gts respectively though there may be some issue about where exactly in that survey number each of them have their respective lands.

But that is an issue which can be gone into in the suit.

Since Ex.P-5 pahani shows the possession of the predecessors of the respondent, the court below rightly granted temporary injunction pending suit in favour of the respondent.

I, therefore, do not find any merit in the appeal. It is accordingly dismissed at the admission stage. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 25.07.2019

MRKR