

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

C.R.P.No.5920 of 2018

ORDER:

Heard Sri Nazir Ahmed Khan, learned counsel for the petitioners and Sri D.V.Kishore, learned counsel for the respondents.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.20-12-2017 in C.M.A.No.66 of 2015 of the XI Additional Chief Judge, City Civil Court at Hyderabad, confirming the order dt.04-08-2015 in I.A.No.250 of 2014 in O.S.No.912 of 2014 of the VIII Junior Civil Judge, City Civil Court, Hyderabad.

3. Petitioners are plaintiffs in the suit.

4. They filed said suit against respondents for perpetual injunction restraining the respondents from interfering with their possession and enjoyment of the suit schedule property which is a premises bearing Municipal No.13-1-519 in Sy. No.50, Ward No.13, Block 1, admeasuring 1433 sq yds.

5. The petitioner No.1 is a registered Society and petitioner No.2 is its President. Petitioners claimed that the property was purchased under registered sale deed dt.10-01-1967 by late Laxman Singh Hazari and six others, Members of Gandhi Hanuman Temple, from the grand father of the 1st respondent and the father of the 2nd respondent by name late Lakhan Singh Hazari. It is contended that the purchasers formed the

1st petitioner-Samaj with the name of “Lodh Kshatriya Sadar Panchayat”/ Petitioner No.1 and that the 1st petitioner was in physical possession and enjoyment of the property. It was alleged that in the suit schedule property, apart from the school, which is Government aided, one Hanuman Temple and Vyayamshala were also located and the remaining open land is in peaceful possession and enjoyment of the Samaj. It was also alleged that to the eastern side of the suit schedule property, there were mulgies and the same were let out for one year to the tenant through registered lease deed dated 16-11-1999 executed by the petitioners, that the tenant’s name was Mr. Raghuveer Singh and thereafter, he was continued in possession as a tenant at sufferance by paying monthly rents. Petitioners asserted that the respondents wanted to use the open land of the suit schedule property and created an unregistered gift deed on stamp paper and set up title to the suit schedule property.

6. It is alleged that the respondents had filed O.S.No.86 of 2012 for perpetual injunction against the 1st petitioner along with an application I.A.No.211 of 2012 for temporary injunction; the said suit was then allotted to the V Additional Senior Civil Judge, City Civil Court, Hyderabad and renumbered as O.S.No.883 of 2012 and the said temporary injunction application was also renumbered as I.A.No.492 of 2012; that temporary injunction was granted on 28-09-2012 in I.A.No.492 of 2012; that this was challenged in C.M.A.No.142 of 2012 by the 1st petitioner before the III Additional Chief Judge, City Civil Court, Hyderabad; that the said appeal was dismissed on 22-10-2013; and

the petitioner had then preferred C.R.P.No.5169 of 2013 before this Court and in C.R.P.M.P.No.7165 of 2013 on 19-12-2013, this Court suspended the orders in I.A.No.492 of 2012.

7. It is further contended by the petitioners that in spite of the same, the respondents were interfering with the possession and enjoyment of the petitioners and therefore police complaint was also lodged. They contended that in view of the continued interference by the respondents, they filed the instant suit.

8. Written Statement was filed by the respondent Nos.1 and 2 opposing the grant of relief to the petitioners. They contended that the suit is barred by principle of *res judicata* and the petitioners, without possession of the suit property, had filed the suit. They contended that there was a gift deed executed by Kunwar Singh Hazari and uncle of the 2nd respondent on 11-03-1996 in favour of the 2nd respondent and the respondents were in possession of the property. They also contended that C.R.P.No.5169 of 2013 is still pending on the file of this Court. They also denied the contention of the petitioners that petitioners purchased the suit schedule property under registered sale deed dt.10-01-1967.

9. Along with the suit, the petitioners filed I.A.No.250 of 2014 under Order 39 Rules 1 and 2 CPC for grant of temporary injunction pending the suit. They reiterated the contentions raised in the plaint in this I.A. and sought temporary injunction pending suit.

10. Counter affidavit was filed by the respondents taking the same pleadings as in the Written Statement.

11. By order dt.04-08-2015, the Court below dismissed I.A.No.250 of 2014. It observed that in C.R.P.No.2214 of 2013, this Court had confirmed the order of temporary injunction granted in favour of the respondents in I.A.No.492 of 2012 on 28-09-2012 and that the said injunction is subsisting against the petitioners who were respondents in O.S.No.883 of 2012.

12. This finding of the trial Court is incorrect because in C.R.P.No.2214 of 2013, the order challenged was, order dt.18-02-2013 passed by the III Additional Chief Judge, City Civil Court, Hyderabad, in C.M.A.No.142 of 2012 refusing to suspend the order dt.28-09-2012 in I.A.No.492 of 2012 in O.S.No.883 of 2012. The trial Court should have therefore seen that C.R.P.No.2214 of 2013 was totally irrelevant. In fact, C.M.A.No.142 of 2012 filed by the petitioner was dismissed on 22-10-2013 by the III Additional Chief Judge, City Civil Court, Hyderabad, but the 1st petitioner had questioned the same in C.R.P.No.5169 of 2013 and in C.R.P.M.P.No.7165 of 2013 on 19-12-2013, this Court had granted suspension of the order dt.28-09-2012 in I.A.No.492 of 2012 in O.S.No.883 of 2012. Once the said suspension order was granted, it cannot be said that the temporary injunction granted in favour of respondents in I.A.No.492 of 2012 in O.S.No.883 of 2012 is still subsisting.

13.The order in I.A.No.250 of 2014 was challenged by the petitioner in C.M.A.No.66 of 2015 before the XI Additional Chief Judge, City Civil Court, Hyderabad. The said Court also confirmed the order passed in I.A.No.250 of 2014 by dismissing the C.M.A. on 20-12-2017.

14.In its order in C.M.A.No.66 of 2015, the XI Additional Chief Judge, City Civil Court, Hyderabad held that the petitioners did not file any scrap of paper to prove that they are running a school or constructed mulgies or received rents from the tenants. It also held that no rental receipts were filed by the petitioners and the lease deed Ex.A.2 filed by them relates to the period from 01.12.1999 to 30.11.2000, and there is no evidence that the tenant is continuing as a tenant at sufferance by paying monthly rents. It also observed that no school records of the school allegedly being run by the petitioners was filed to prove the *prima facie* case that the petitioners are running a school in the property. It further observed that though respondents claimed possession and enjoyment of 2195.54 Sq.Yds., and that they are running a temple and Vyayamashala, there was an order granted by this Court on 19.11.2013 in CRP.MP.No.7165 of 2013 in CRP.No.5169 of 2013, and the petitioners therefore did not establish either *prima facie* case or balance of convenience.

15.Thus, the lower Appellate Court confirmed the order of the Trial Court in refusing interim injunction to the petitioners.

16.Assailing the same, the present Civil Revision Petition is filed.

17.It is important to note that the petitioners had claimed title to the property under a registered sale deed dt.10.01.1967, and the said document *prima facie* proves the title of the petitioners over the subject property. Though the respondents have denied the purchase by the petitioners under the above registered sale deed, the said registered sale deed is staring at the Court.

18.Though the respondents have also claimed title to the property under a Gift Deed dt.11.03.1996, the said Gift Deed is an unregistered document; and is *prima facie* inadmissible in evidence and the said Gift Deed is not even marked by the respondents in I.A.No.250 of 2014.

19.In fact, according to the petitioners, even in I.A.No.492 of 2012 in O.S.No.883 of 2012, they had opposed marking of the said unregistered Gift Deed by filing I.A.No.875 of 2012, and the said application was allowed on 28.09.2012 and the V Senior Civil Judge, City Civil Court, Hyderabad, refused to mark the said document. Though such plea has been raised in para No.5 of the plaint, there is no denial in the written statement of the fact that the marking of the said document was not permitted by the V Senior Civil Judge, City Civil Court, Hyderabad.

20.That apart, the interim injunction granted in favour of the respondents in I.A.No.492 of 2012 in O.S.No.883 of 2012 by the V Senior Civil Judge, City Civil Court, Hyderabad, was admittedly suspended by this Court on 19.11.2013 in CRP.MP.No.7165 of 2013 in

CRP.No.5169 of 2013, and the said Revision is still pending before this Court.

21. Merely because, the said Revision is still pending, the lower Appellate Court cannot ignore the order granted by this Court in CRP.M.P.No.7165 of 2013 suspending the temporary injunction granted in favour of the respondents against the 1st petitioner.

22. Ex.P.2-Registered Lease Deed dt.16.11.1999, filed by the petitioners, showed that the 1st petitioner had let out to a tenant a mulgi in the subject land. This would, *prima facie*, show the possession of petitioners through their tenant in support of the said mulgi of the subject land. The respondents, it is to be noted, have filed no documents to support that they are in possession of the suit schedule property.

23. Therefore, the lower Appellate Court was not correct in rejecting the appeal on the ground that evidence of running of the School or collection of rentals from the mulgies is not established by the petitioners and the conclusion of the lower appellate Court in that regard has to be held to be perverse. It cannot ignore Exs.P.1 and P.2, which *prima facie* establish the title and possession of the petitioners of the subject property. Therefore, the order of the lower Appellate Court in C.M.A.No.66 of 2015 also cannot be sustained.

24. Accordingly, the Civil Revision Petition is allowed. The order dt.20.12.2017 passed in C.M.A.No.66 of 2015 on the file of XI Additional Chief Judge, City Civil Court, Hyderabad as well as the order

dt.04.08.2014 in I.A.No.250 of 2014 in O.S.No.912 of 2014 of the VIII Junior Civil Judge, City Civil Court, Hyderabad are both set aside, and I.A.No.250 of 2014 is allowed; and a temporary injunction is granted in favour of petitioners against the respondents restraining the respondents from interfering with the possession and enjoyment of the petitioners in respect of the suit schedule property. No order as to costs.

25.As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-02-2019
kvr/ndr

