

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

C.R.P.No.3681 of 2018

O R D E R:

Heard counsel for petitioner and counsel for respondents.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.15.05.2018 in I.A.No.296 of 2017 in O.S.No.333 of 2017 of the Sub Divisional Magistrate and Special Assistant Agent to Government, Mobile Court, Bhadrachalam.

3. Petitioner is the plaintiff in the above suit. He filed the said suit against the respondents for perpetual injunction in respect of Acs.4.30 gts in survey No.18/1/Na of Narsapuram Village, Annapureddypalli Mandal, Bhadrachalam District.

4. Petitioner claimed that the above said property belongs to his paternal grand-father, who had purchased it from one Kalluri Rajeswar Rao on 29.05.1969 by way of Sada Sale Deed, that under a registered Will dt.22.12.1997, it was bequeathed to the petitioner, and his paternal grand-father had died on 25.01.2008. He contended that he was in possession of the property, but the name of another person, Nerella Kumari, was wrongly shown in the revenue records as possessor and pattadar, and that the respondents were interfering with the possession and enjoyment of the petitioner without any right therein.

5. Along with the suit, petitioner filed I.A.No.296 of 2017 seeking temporary injunction pending suit reiterating the contents of the plaint.

6. Counter affidavit was filed by the respondents denying the plaint allegations. They contended that the paternal grand-father of the petitioner did purchase the land in survey No.18/1/Na, but he purchased only Acs.3.20 gts., and not Acs.4.30 gts. They stated that though the said Narsimha Rao executed the registered Will, during the life time of the said Narsimha Rao, he gave the said land as Pasupu Kumkuma to his grand-daughter, by name Uma Rani, who is the elder sister of the plaintiff and also executed a written agreement before the village elders on 19.04.2006. It is stated that the said Usha Rani died on 23.07.2017 and thereafter the petitioner tried to dispossess her family members and filed the present suit. They contended that the possession of the property is with the family of late Usha Rani and the respondents are cultivating the same.

7. By order dt.15.05.2018, the Court below dismissed the application for injunction without discussing any of the documents filed by the petitioner and simply recorded a conclusion that the petitioner failed to prove his possession over the suit schedule property at the time of filing of the suit, and that no document was filed by the petitioner to prove his possession over the suit schedule property.

8. Assailing the same this Revision is filed.

9. Counsel for petitioner contended that the Court below erred in not considering the pahanies filed by the petitioner along with the plaint and if the order passed by the Court below is not set aside grave prejudice would be caused to the petitioner.

10. Counsel for the respondents supported the order passed by the Court below.

11. The finding of the Court below is unsustainable because along with the plaint certain documents were filed by the petitioner in support of his plea and these included certified copies of pahanies for the years 1972-73 to 2010, and mee-Seva Pahanies for 1425, 1426 and 1427 Fasli. Without adverting to the contents of the said documents, such a conclusion could not have been drawn by the Court below.

12. Therefore, the impugned order is set aside and the matter is remitted back to the Court below to pass a reasoned order after considering all the documentary evidence submitted by both parties. This exercise shall be completed within a period of four (04) weeks from the date of receipt of a copy of this order.

13. The Civil Revision Petition is disposed of accordingly. No order as to costs.

14. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

25th February, 2019.

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