

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2016 in/and C.R.P.No.704 of 2016

And

I.A.No.5 of 2016 in/and C.R.P.No.1005 of 2016.

COMMON ORDER :

These two Revisions arise between the same parties out of two different suits O.S.No.139 of 2012 and 55 of 2016 and so they are being disposed of by this common order.

2. O.S.No.139 of 2012 was filed by petitioner in both the Revisions for a perpetual injunction restraining the respondent from interfering with his alleged possession and enjoyment of the suit schedule property which is an extent of Ac.13.10 gts in Kothuru village, Tekulapally Mandal, Khammam District.

3. In the said suit, he filed I.A.No.126 of 2012 for an *ad interim* injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit schedule property.

4. Without assigning any reasons, the Sub-Divisional Magistrate (Mobile Court) at Bhadrachalam on 31-10-2012 granted *ad interim* injunction in favour of petitioner for three (03) weeks.

5. Counter was filed by respondent opposing the said relief and contending that it was the respondent in I.A.No.126 of 2012 who was in possession of the suit schedule property. It was contended that

pattadar passbooks and title deeds were issued by the Mandal Revenue Officer, Tekulapally to the respondent.

6. The said counter-affidavit was filed on 23-11-2012 and after the matter was adjourned on few occasions, on 04-10-2013, the Court below vacated the *ad interim* injunction stating that pahanis and pattadar pass books indicate the possession of the respondent.

7. Challenging the same, C.R.P.No.1005 of 2016 was filed on 16-02-2016, after more than 1½ years after passing of the said order.

8. On 02-03-2016, C.R.P.No.1005 of 2016 was admitted and interim suspension was granted for a period of four (04) weeks.

9. I.A.No.5 of 2016 is filed to vacate the said order.

10. It is important to note that if an *ex parte* order of temporary injunction is being granted, the Court has to record reasons for doing so and should take into consideration, while passing the an order of injunction, all relevant factors including as to how the object of granting injunction itself would be defeated if an *ex parte* order is not passed. Also any such *ex parte* order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. (**Shiv Kumar Chadha Vs. Municipal Corpn. Of Delhi¹**).

¹ (1993) 3 SCC 161

11. The order dt.31-10-2012 passed in I.A.No.126 of 2012 in O.S.No.139 of 2012 does not record any reasons why the Court below granted *ad interim* injunction *ex parte* in favour of the respondent.

12. Moreover, in the impugned order, the Court below had perused the documents filed by respondent and had come to conclusion that petitioner was not in possession of the suit schedule property and had vacated the said order.

13. Having regard to the reason assigned by the Court below for vacating the interim order, and having regard to the fact that the original *ex parte* *ad interim* injunction granted to the petitioner was contrary to the law as laid down in **Shiv Kumar Chadha** (1 supra), I see no error of jurisdiction in the order passed by the Court below warranting interference with the said order.

14. Accordingly, C.R.P.No.1005 of 2016 is dismissed. Consequently, I.A.No.5 of 2016 is closed. No costs.

15. Coming to C.R.P.No.704 of 2016, this Revision arises out of O.S.No.55 of 2016 filed by 1st respondent against petitioner and three others for a perpetual injunction restraining the petitioner and other respondents from interfering with the possession and enjoyment of the 1st respondent over the suit schedule property.

16. Along with the suit, 1st respondent filed I.A.No.43 of 2016 under Rule 42(C) of A.P.Agency Rules seeking temporary injunction restraining the petitioner and other respondents from interfering with

his alleged peaceful possession and enjoyment of the suit schedule property.

17. On 05-02-2016, without assigning any reasons as is mandated by the judgment in **Shiv Kumar Chadha** (1 supra), the Court below granted *ad interim* injunction favour of 1st respondent and against petitioner and other respondents.

18. Assailing the same, petitioner has filed C.R.P.No.704 of 2016.

19. On 08-02-2016, this Revision was admitted and interim suspension was granted for a period of six (06) weeks.

20. I.A.No.2 of 2016 is filed to vacate the said order.

21. Learned counsel for petitioner contended that the order granting *ad interim* injunction in favour of 1st respondent in the suit is to be supported by reasons as per judgment in **Shiv Kumar Chadha** (1 supra) and in the absence of such reasons, the order cannot be sustained.

22. Though learned counsel for 1st respondent sought to sustain the said order, since there are no reasons given in the order dt.05-02-2016 in I.A.No.43 of 2016 in O.S.No.55 of 2016, the said order cannot be sustained.

23. Accordingly, C.R.P.No.704 of 2016 challenging the same order is allowed; I.A.No.43 of 2016 in O.S.No.55 of 2016 is remitted back to the Court below and the Court below is directed to consider the

contentions of both sides as well as evidence adduced by both sides in I.A. and then pass a reasoned order in accordance law within two (02) months from the date of receipt of copy of this order. Consequently, I.A.No.2 of 2016 is closed. No costs.

24. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-06-2019

Vsv

