

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

CRP.No.4362 and 4365 of 2018

COMMON ORDER:

These two Revisions arise out of the same suit, between the same parties and so they are being disposed of by this common order.

2. Petitioner in both these Revisions is the daughter of the respondent/1st respondent, who is a Senior Citizen and also a widow.

3. The respondent filed O.S.No.564 of 2016 on the file of the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, against the petitioner for a Perpetual Injunction restraining the petitioner from interfering with her peaceful possession and enjoyment of the plaint schedule property which is a house bearing No.13-1-182 situated at Ashok Nagar Colony within the Grampanchayat limits of Bhadrachalam Town.

4. The respondent also filed O.S.No.565 of 2016 in the same Court for a Perpetual Injunction against the petitioner restraining the petitioner from interfering with her peaceful possession enjoyment of two properties,(i) a house bearing No.1-1-130 situated in Chappidi Diguva, Bhadrachalam and (ii) shop bearing No.83 situated at Uday Bhaskar Road, Bhadrachalam, alleging that the said properties are in occupation of respondents 2 to 4 as

tenants in CRP.No.4365 of 2018 who are impleaded as defendants 2 to 4 in the said suit.

5. It is the contention of the respondent/1st respondent in both the suits that she is the owner of the plaint schedule properties which are her Stridhana properties; that the petitioner had no right, title, possession or interest therein whatsoever; that the name of the respondent is incorporated in the property register maintained by the Grampanchayat of Bhadrachalam in respect of these properties, and so she has been paying taxes for the said properties; that taking advantage of the respondent/1st respondent's residence at Hyderabad, and also her old age, petitioner instructed the tenants of the properties in O.S.No.565 of 2016 not to pay rents to the respondent and started appropriating the rents to herself. She also alleged that she was trying to occupy these properties forcibly.

6. Respondent filed I.A.No.632 of 2016 in O.S.No.564 of 2016 under Rule 42(a) of the A.P. Agency Rules, 1924 seeking temporary injunction pending disposal of the suit against the petitioner to restrain the petitioner from interfering with her peaceful possession and enjoyment of the suit properties, and also filed I.A.No.633 of 2016 in O.S.No.565 of 2016 not only for such temporary injunction against the petitioner in respect of the properties which are subject matter of that suit, but also for a direction to the respondents 2 to 4 in CRP.No.4365 of 2018 to pay monthly rents to her, pending disposal of the suit.

7. Written statements were filed by the petitioner in both the suits stating that her father acquired the suit properties with his earnings in the name of the respondent and so her name was found in the panchayath records.

8. In para 3 of the counter filed in I.A.No.632 of 2016 in O.S.No.564 of 2016 a plea was taken that the subject property was allotted to the petitioner by her father during oral partition of the family and in para 6 of the said counter a plea was taken that at the time of the petitioner's marriage, her father allotted the property to the petitioner and gifted it to her and that the respondent ratified the said transaction. Petitioner disputed the possession of the respondent over the property. She also claimed to have constructed first floor with her own funds and let it out to third parties and claimed to be paying house tax. She also alleged that her daughter was given in marriage to her younger brother, but disputes arose between them, and her younger brother was using the respondent to harass the petitioner, and these facts were suppressed by the respondent.

9. In I.A.No.633 of 2016 in O.S.No.565 of 2016, counter was filed by the petitioner contending that the properties, which are subject matter of the said suit, were acquired from the sale proceeds of properties sold by the petitioner's husband in the name of the respondent, and the said properties were not purchased by the respondent from her Stridhana.

10. By order dt.05.12.2017 in I.A.No.632 of 2016 in O.S.No.564 of 2016, the Court below granted interim injunction in favour of the respondent and took note of the inconsistent pleadings of the petitioner in her counter affidavit in I.A.No.632 of 2016 wherein, in para 3 she claimed that the property was allotted to her during oral partition, and in para 6, she stated that it was gifted to her by her father at the time of marriage. It also relied upon a pleading of the petitioner in I.A.No.1464 of 2016 in O.S.No.1264 of 2016 on the file of the II Additional District Judge, Ranga Reddy District at L.B.Nagar in respect of other properties wherein petitioner had stated that ownership of the properties at Bhadrachalam (*properties which are subject matter of the subject suits*) are not being claimed by her and that they belong to the respondent. It also considered the documents filed by the petitioner with regard to her alleged possession, such as Lease Agreement filed by her, and observed that when the ownership of the property does not belong to her, she could not have entered into any lease agreement with a third party in respect of the said property. It observed that in spite of giving support to her old-age mother, who is a widow, petitioner is trying to take advantage of the relationship, and trying to take possession of the properties in a manner opposed to law and to the provisions of the Maintenance & Welfare of the Parents and Senior Citizens Protection Act, 2007.

11. The Court below passed another order on 10.07.2018 in I.A.No.633 of 2016 in O.S.No.565 of 2016 granting temporary

injunction to the 1st respondent against the petitioner and gave a direction to the defendants i.e., respondents 2 to 4 to pay monthly rents only to 1st respondent pending disposal of the suit. It held that the petitioner did not file any document to show that A-Schedule property in O.S.No.565 of 2016 was acquired in the name of the respondent or that B-Schedule property shop was acquired by the petitioner with her own funds. It also observed that respondents 2 to 4, having pleaded that they are in occupation of the properties as tenants of the petitioner, did not file rent deeds and even if there are such rent deeds, petitioner could not have rented the properties to respondents 2 to 4 as she is not the owner thereof. It adopted the reasoning given in the order dt.05.12.2017 in I.A.No.632 of 2016 in O.S.No.562 of 2016.

12. Assailing the said orders, these two Revisions are filed.

13. Counsel for the petitioner contended that in both the orders passed by the Court below there is no finding about possession of the respondent/1st respondent on the date of filing of the suits, and therefore the said temporary injunction orders cannot be sustained. He also contended that the Appendix to the orders passed by the Court below in both the I.A.s does not disclose the exhibits filed by both sides and this is an irregularity.

14. Counsel for the respondent in CRP.No.4362 of 2018 and for the 1st respondent in CRP.No.4365 of 2018 supported the orders

passed by the Court below and adopted the reasoning of the Court below.

15. From the above facts, it is clear that the title of the respondent to the property, which is subject matter of O.S.No.564 of 2016, is admitted by the petitioner. Though the title of the 1st respondent in CRP.No.4365 of 2018 is disputed by the petitioner and she contends that the A-Schedule property was acquired by petitioner's father and B-Schedule property was acquired from the amounts of sale proceeds of properties belonging to petitioner's husband in the name of the respondent, admittedly no material has been filed in support of the said pleading.

16. The facts also indicate that the respondent in CRP.No.4362 of 2018, who is also 1st respondent in CRP.No.4365 of 2018, is none other than the mother of the petitioner in both the Revisions. It is not in dispute that she is a Senior Citizen and also a widow and that she is residing in Hyderabad, while the petitioner is residing in Bhadrachalam Town where all the suit schedule properties are located.

17. It is not denied by the petitioner that in the interlocutory application I.A.No.1464 of 2016 in O.S.No.1264 of 2016 on the file of the II Additional District Judge, Ranga Reddy at L.B.Nagar petitioner had filed a counter saying that she is not claiming properties of the respondent at Bhadrachalam.

18. Having taken such a pleading, petitioner is estopped from taking a different stand in the instant suits.

19. Merely because the respondent took the assistance of the petitioner to manage her properties in Bhadrachalam, petitioner cannot *prima facie* be allowed to take advantage of the old age of the respondent and her staying away from Bhadrachalam to grab the properties belonging to the respondent.

20. Therefore, since the ownership of the properties *prima facie* stands in favour of the respondent, she is presumed to be in possession of the said properties, constructively on the date of filing of the suit, and would be entitled to grant of temporary injunction pending suits.

21. No doubt, the Court below omitted to list out the documents filed by both sides in the Appendix to respective orders. But merely because there is an omission on the part of the Court below, petitioner cannot take advantage of the same because the documents relied upon by the trial Court are referred to specifically in the body of the impugned orders.

22. Therefore, the Court below did not commit any error of jurisdiction in granting temporary injunction in favour of the respondent/1st respondent in both the I.A.s, and also in directing respondents 2 to 4 in CRP.No.4365 of 2016 to pay the rents of the premises in their occupation, which is the subject matter of

O.S.No.565 of 2016, only to the respondent/1st respondent pending disposal of the suit.

23. For the aforesaid reasons, I do not find any merit in these Civil Revision Petitions and they are accordingly dismissed. However, the Court below shall decide the suits uninfluenced by any observations made by it in the impugned orders or by this Court in this order. No order as to costs.

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

15th July, 2019.

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M.S. RAMACHANDRA RAO, J

