

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

CIVIL REVISION PETITION NO.7621 OF 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt. 24.10.2018 in C.M.A.No.8 of 2018 on the file of the II Additional District & Sessions Judge (F.T.C.), Mancherial, confirming the order dt. 16.07.2018 in I.A.No.499 of 2017 in O.S.No.364 of 2009 (O.S.No.22 of 2007) on the file of the Principal Senior Civil Judge at Mancherial.

Petitioner herein is fourth defendant in the suit.

Respondents 1 to 3 herein/plaintiffs filed the said suit for perpetual injunction against respondents 4 to 7 contending that they are the owners of the suit schedule property and they have been in possession as owners from 1982. They contended that they perfected title to the property by way of adverse possession hostile to the knowledge of the husband of the fourth respondent-defendant No.1 and to the knowledge of respondents 5 to 7 as well. According to them, respondents 4 to 7 are not the owners and they were not in possession of the suit schedule property at any time and if at all they had any right of ownership, which is denied by the plaintiffs, it stands extinguished as the plaintiffs have title. They allege that on 05.02.2007 respondents 4 to 6 tried to trespass into the suit schedule land. They further contended that fifth respondent purchased Ac.0.11 ½ gts forming part of the suit schedule land through registered sale deed dt. 29.01.2007 and sixth respondent purchased Acs.15-03 ¾ gts

in Survey No.712 from fourth respondent under a sale deed dt. 29.01.2007; there was a threat to dispossess them and so the suit was filed to restrain the respondents 4 to 7 from interfering with the possession and enjoyment of the suit schedule property apart from other reliefs which were subsequently given up.

The suit was later transferred to the Court of Principal Senior Civil Judge, Mancherla and renumbered as O.S.No.364 of 2009. Thereafter, it was decreed *ex parte* on 22.12.2011.

This was questioned by the petitioner/fourth defendant who claimed to have purchased plaint schedule property on 04.06.2007 in A.S.No.16 of 2015 before the III Additional District & Sessions Judge at Asifabad. The said appeal was allowed on 23.12.2016 and the matter was remanded back to the trial Court for fresh consideration.

At that stage, respondents 1 to 3 filed I.A.No.499 of 2017 for temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), alleging that the petitioner, along with other defendants was trying to interfere with the possession and enjoyment of the suit schedule property and trying to forcibly evict them.

Counter affidavit was filed by the petitioner opposing the said application and contending that respondents 5 and 6 had purchased the property under registered sale deed from respondent No.4 and they are deemed to be in possession of the suit schedule property even as on the date of filing of the suit; that respondents 1 to 3 are not in possession of the suit schedule property; that petitioner, having

purchased the property on 04.06.2007 from respondents 5 and 6 got his name recorded in the revenue records and also obtained an interim injunction in I.A.No.105 of 2011 in O.S.No.41 of 2011 before the Junior Civil Judge at Chennur. He thus prayed for dismissal of I.A.No.499 of 2017.

Before the trial Court, both parties adduced evidence. While respondents 1 to 3 marked Exs.P1 to P32, petitioner marked Exs.R1 to R24.

By order dated 16.07.2018, the Court below allowed I.A.No.499 of 2017 and held that Exs.P1 to P17 show the possession and enjoyment of the father of respondents 1 to 3 from 1982-83 to 2005-06 in the possession column in the pahanis for the said village. Though in the pattedar column the name of the husband of the fourth respondent/defendant No.1 was shown, it observed that the suit being one for perpetual injunction, possession on the date of filing of the suit is to be considered. It noted from Ex.P24 that father of the petitioners by name Rajamallu died on 11.07.2006, Exs.P26 to 32 which are mee-seva copies of pahanis from 1420 Fasli to 1426 Fasli show the possession of respondents 1 to 3 only, though the name of the petitioner is mentioned as pattedar, and this establishes possession of respondents 1 to 3 over the suit schedule property as on the date of filing of the suit. It observed under Exs.P18 and P19 sale deeds dt. 29.01.2007, respondent No.4 sold away the suit schedule property to respondents 5 and 6 and the question whether possession was delivered under the said document would be decided during trial. It

observed that when the respondents 1 to 3 were shown to be in possession of the suit schedule properties since a long time, it is not clear as to how the petitioner was put in possession by his vendors; and Exs.R9 to R12 and R14 are the documents subsequent to filing of the suit and much significance cannot be attached to them. It also observed that originals of Ex.R16, pattadar passbook and Ex.R17, subsequent copy of pahanis 2018, are not filed and no reasons were assigned for not filing the originals. It also observed that O.S.No.41 of 2011 filed by the petitioner is against the third party and the judgment therein rendered on 23.03.2018 does not bind the respondents 1 to 3. After referring to Ex.R21, which is the mee-seva copy of pahani of 2017, which is subsequent to filing of the suit, the Court held that it would be helpful to the petitioner and other respondents 4 to 7 and likewise Ex.R22 and R23 are also subsequent to filing of the suit and they cannot help them. It then held that injury to the respondents 1 to 3 cannot be compensated in terms of money and therefore, they are entitled to grant of temporary injunction pending suit.

Challenging the same, petitioner filed Civil Miscellaneous Appeal before the II Additional District Judge (F.T.C.) at Mancherial. The lower appellate Court also held that pahanis filed by respondents 1 to 3 from 1982-83 and 2005-06 show that ancestors of plaintiffs have been in possession and enjoyment of the suit schedule though name of husband of D1 continued to be mentioned as pattedar. It also observed that even in documents filed by petitioners, Exs.R4 to R8 in

the possession column of pahanis, respondents 1 to 3 only. It therefore held that though petitioner obtained registered sale deed from respondents 5 and 6, he did not get possession because his vendor's possession was not recorded in the revenue records. It also refused to accept an additional document sought to be filed by the petitioner on the ground that proper reason was not given when the matter was before the trial Court.

Assailing the same, this Revision is filed.

Counsel for the petitioner contended that neither the trial Court nor the lower appellate Court considered the documents produced by the petitioner namely Exs.R1 to R24; and, therefore, the findings of both the Courts require to be set aside.

Counsel for respondents 1 to 3 supported the orders passed by the Court below.

A reading of the trial Court order shows that in paras-16 to 18 almost every document filed by the petitioner in the trial Court has been considered and commented upon. Likewise, in para-8 of the lower appellate Court's order, the lower appellate Court referred to the documents filed by the petitioner.

Thus, both the trial Court as well as the lower appellate Court, based on the material evidence adduced by both parties, have given findings that respondents 1 to 3 alone were in possession of the suit schedule property as on the date of filing of the suit and also subsequent thereto; and the lower appellate Court further held that petitioner could not have obtained possession from respondents 5 and

6 since their possession was not recorded in the revenue records before the sale deed was executed by them in favour of the petitioner on 04.06.2007.

These concurrent findings of fact rendered by both the Courts below are based on appreciation of evidence, and the restrictive jurisdiction under Article 227 of the Constitution of India does not permit exercise of Revisional jurisdiction to interfere with such findings. In the absence of any perversity, or non-consideration of the material evidence, I do not see any ground to interfere with the said findings of fact recorded by both the Courts below against the petitioner.

Therefore, the Revision fails and is, accordingly, dismissed. However, the trial Court shall proceed further uninfluenced by its findings in the order dt. 16.07.2018 in I.A.No.499 of 2017 in O.S.No.364 of 2009 or in the order passed by the lower appellate Court on 24.10.2018 in C.M.A.No.8 of 2018 or by the observations made by this Court in this order.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(M.S.RAMACHANDRA RAO, J)

30th July 2019
RRB