

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2895 OF 2019

Dated:27.01.2020

Between:

Ahmed Mohinuddin Hassan,
Age 84 years, Occ: Nil and others

.. Petitioners

And

Suryaneni Muralidhar Rao,
S/o. Rajeshwar Rao, age 61 years,
Occ: Agriculture, R/o. Laxmidevipet
Village, Venkatapur (M), Warangal
District and others

.. Respondents



This Court made the following:

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ORDER:

Heard learned counsel for the petitioners, Sri C. Hari Preeth, learned counsel for respondent No.1 and Sri A. Prabhakar Rao, learned counsel for respondent Nos.2 to 5.

2. Petitioners herein are the plaintiffs and respondents herein are the defendants.

3. O.S.No.420 of 2015 on the file of II Additional Senior Civil Judge, Warangal, was instituted by the petitioner/plaintiffs praying to grant perpetual injunction restraining the defendants from interfering with their possession and enjoyment and to direct the Mandal Revenue Officer, Venkatapur Mandal, to enter their names in the revenue records in respect of the suit schedule property. The suit schedule property comprised of land admeasuring Acs.12.11 guntas in Survey No.35, Acs.6.24 guntas in Survey No.38 and Ac.1.05 guntas in part of Survey No.34, in all Acs.20.00. Petitioners also filed I.A.No.582 of 2015 in the said suit praying to grant temporary injunction in their favour. By order dated 03.08.2017, the said I.A. was allowed and the order of *status quo* earlier granted by the trial Court on 14.08.2015 was made absolute till final disposal of the suit. Aggrieved thereby, the defendants preferred C.M.A.No.46 of 2018. The Principal District Judge, Warangal, vide its order dated 22.08.2019, vacated the *status quo* order granted by the trial Court. Hence, this revision.

4. The material on record would disclose that predecessors in interest of the plaintiffs earlier filed O.S.No.20 of 1965 in the Court of the Subordinate Judge, Warangal, praying to grant declaration of title and recovery of possession against the defendants therein. The defendants in the said suit are the ancestors of the respondents herein. Subsequently, decree was granted in favour of the plaintiffs therein. Therefore, the plaintiffs filed E.P.No.42 of 1975 seeking enforcement of the decree granted in O.S.No.20 of 1965. By order dated 24.04.1987, the said E.P. was ordered observing that the land in Survey Nos.35, 38 and part of Survey No.34 corresponds to old Survey No.242, which was the subject matter of O.S.No.20 of 1965 and directed handing over possession to the petitioners therein. In terms thereof, the Bailiff handed over the possession of the subject land mentioned in the E.P. order. Taking note of the order in E.P., the trial Court granted injunction in favour of the petitioners.

5. The first appellate Court observed that the contention of the petitioners that possession was delivered pursuant to the orders passed in E.P.No.42 of 1975 was false and that the petitioners failed to file Bailiff's report to establish that they were delivered possession. With reference to the objection raised by the petitioners that there was no subdivision of Survey Nos.35, 38 and part of 34 and that there was no material to show that there was subdivision of above survey numbers, the first appellate Court disinclined to go into that aspect holding that the same has to be considered during the course of trial and cannot be looked into at the stage of passing interlocutory orders. It appears from the order of the first appellate Court that the only reason to overrule the

status quo order granted by the trial Court in valid exercise of discretion was on the ground that the Bailiff report was not filed.

6. As seen from the order in E.P.No.42 of 1975, there is clear discussion with regard to land in old Survey No.242 forming part of the present Survey Nos.35, 38 and 34 and then directions were issued to the Bailiff. No doubt, the petitioners ought to have placed the report of the Bailiff before the first appellate Court, but having regard to the orders in E.P., and clear assertion of petitioners that Bailiff granted the possession, on due consideration of respective submissions when a reasoned order was passed by trial Court, the same could not have been upset on the ground that Bailiff's report was not filed. However, the petitioners filed the copy of the Bailiff report along with the revision, which would show that possession was handed over to the petitioners.

7. Learned counsel for the respondents sought to contend that Survey No.242 does not correspond to new Survey Nos.35, 38 and 34 and they belong to old Survey Nos.311, 312 and 295 and therefore the assessment of the Execution Court that Survey Nos.35, 38 and 34 corresponding to Survey No.242 is erroneous and the land held by the respondents is in Survey Nos.34/A, 34/B, 35/A1, 35/A2, 35/B and 38/2, respectively, corresponding to Survey Nos.975, 976, 978 and 979 part of Survey Nos.972 and 974 and not the land claimed by petitioners. He would further submit that the respondents be given liberty to lead evidence in support of their contention about the above issue.

8. It is always open to the defendants in the suit to lead evidence in support of their contentions. The Court is not expressing any opinion. However, suffice to note that *prima facie* from the finding recorded by the Executing Court in E.P.No.42 of 1975, old Survey No.242 corresponds to Survey nos.35, 38 and 34. In view thereof and that the possession of said land claimed to have been handed over to petitioners, balance of convenience is in favour of petitioners.

9. Accordingly, the order dated 22.08.2019 passed in C.M.A.No.46 of 2018 on the file of the Principal District Judge, Warangal, is set aside. Consequently, the order dated 03.08.2017 passed in I.A.No.582 of 2015 in O.S.No.420 of 2015 on the file of II Additional Senior Civil Judge, Warangal, is restored. It is needless to observe that it is always open to the parties before the trial Court to lead evidence in support of their assertions. The observations made herein are only for the purpose of deciding the issue in the revision and the trial Court shall conduct trial and decide the issues uninfluenced by the observations made by the first appellate Court and this Court.

10. The Civil Revision Petition is accordingly allowed. There shall be no order as to costs. Pending Miscellaneous Petitions, if any, shall stand closed.

P. NAVEEN RAO, J

Date:27.01.2020

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