

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2969 OF 2019

DATED : 04.02.2020

Between :

Thatipally Somaiah S/o.Chandramouli,
Aged about 63 yrs, Occu : Agriculture,
R/o.Katrapalli Village, Rayaparthi Mandal,
Warangal District & another

..... Petitioners

And

Abbanapuram Brahmaiah S/o.Venkataiah,
Aged about 57 yrs, Occu : Agriculture,
R/o.Katrapalli Village, Rayaparthi Mandal,
Warangal District & another.

.....Respondents



The Court made the following:

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ORDER :

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Briefly, noted, petitioners/plaintiffs instituted O.S.No.72 of 2012 in the Court of Junior Civil Judge, Thorrur, seeking permanent injunction against the respondents/defendants.

3. The averments in Paragraph No.1 of the plaint as well as the suit schedule would disclose that temporary injunction was sought in I.A.No.303 of 2012 in O.S.No.72 of 2012, against interference by the defendants on land to an extent of Ac.2-14 guntas in Sy.No.229/A, Ac.2-14 guntas in Sy.No.229/B, Ac.1-27 guntas in Sy.No.230/A, Ac.2-01 guntas in Sy.No.230/B and Ac.1-00 in Sy.No.274/B of Katrapally Village of Rayaparthi Mandal, Warangal District. In the said I.A., several documents were marked including the report dated 18.10.2012, submitted by the Tahsildar, Rayaparthi to the Collector, Warangal, which was marked as Ex.P.10.

4. From a reading of the order of the trial Court, it is seen that there is extensive discussion on the contents of the said report to hold that land to an extent of Ac.2-06 guntas in Sy.No.228 is the land belonging to the plaintiff. By extensively relying on the report Ex.P.10, the trial Court also held that the revenue authorities without any verification, issued pattadar pass books in favour of defendants, with regard to land in Sy.No.228, whereas, plaintiffs are in physical possession of the said land. In view thereof, injunction was granted. Aggrieved thereby defendants preferred

C.M.A.No.70 of 2013 on the file of VI Additional District Judge, Mahabubabad, Warangal.

5. The lower appellate Court, noticed that Ex.P.10 is a post suit document and therefore, no credence was given to it. It also noted that the said document suffers from several infirmities as recorded in Paragraph No.17 of the said order. It also noted that there was no material to support the opinion expressed by the trial Court that land in Sy.No.193 is renumbered as Sy.No.228. The lower appellate Court noticed that the contention of defendants that there was no pleading in the plaint or petition filed in I.A., as to how the father of the plaintiffs acquired land in Sy.No.228. The lower appellate Court further noticed that Ex.P.10 is only a report submitted by Tahsildar, but no consequential steps were taken and Exs.R.3 to R.10 would prove the occupation of suit schedule land in favour of defendants, and those documents were not cancelled. It also further observed that no legally valid document vesting right of either ownership or possession in favour of plaintiffs, on land to an extent of Ac.1-27 guntas in Sy.No.228 was produced. Having found that the trial Court erred in granting injunction, though no basis was laid by the plaintiffs, to prima-facie establish their ownership and possessory claim, which are essential ingredients to grant an injunction, reversed the decision of trial Court.

6. Extensive submissions are made by learned counsel for the petitioners and learned counsel for the respondents.

7. Learned counsel for the petitioners sought to contend that Ex.P.10 report proves that how the records were falsified and illegally defendants claimed land in Sy.No.228, whereas, they have

no manner of right on that land. Learned counsel also submits that subsequently, the revenue records are corrected and names of plaintiffs are now mutated and they were also issued pattadar pass books and title deeds. He placed reliance on the decision of Hon'ble Supreme Court in **M.Kallappa Setty Vs M.V.Lakshminarayana Rao**¹, on the issue of possessory claim of petitioners.

8. I have carefully considered the submissions and gone through the order passed by the trial Court and lower appellate Court. Prima-facie, it is seen from the material on record that land in Sy.No.228 was never the subject matter of the suit or I.A., but there was extensive debate on the said survey number consequent to marking of the report (Ex.P.10) and the entire discussion of the trial Court proceeds on how the report points out illegalities crept in the revenue records. Except the discussion on the said survey number, there is no discussion as to how the plaintiffs satisfied the parameters to grant temporary injunction.

9. Though the lower appellate Court comes to right conclusion on the issue of granting of temporary injunction, even it has not discussed as to how the issue of validity of report of the Tahsildar in Sy.No.228 is relevant for consideration, when the said survey number is not the subject matter of the suit.

10. Be that as it may, having regard to the reasons assigned by the lower appellate Court in paragraph Nos. 17, 18 and 19, I do not see any error in the decision arrived at by the lower appellate Court in reversing the decision of the trial Court. I am of the considered opinion that the trial Court erred in exercising its discretion in granting injunction based on a communication

¹ (1973) 2 Supreme Court Cases 358

between the Tahsildar and the Collector and by the time the issue was considered, there were no consequential steps taken affirming the content of report, more so, as rightly observed by the lower appellate Court, except for Ex.P.10, no independent material was placed on record to show a semblance of ownership claim and possession.

11. Suffice to note at this stage, that as per the exhibits marked, it is seen that Exs.P.2 to P.8 are the pahanies for the years 2005-06 to 2010-11, and by the time when the suit was instituted, pahani for the year do not reflect the names of plaintiffs. On the contrary, the defendants placed reliance on the copies of the pahanies for the years 2005-06 to 2011-12. In other words, by the time suit was instituted, prima-facie, it appears defendants have shown that in the revenue records, their names are reflected. In the absence of any other cogent material to substantiate the claim of ownership and possession, which are the essential ingredients to grant temporary injunction, but were not satisfied by the plaintiffs when application for grant of temporary injunction was filed.

12. In the facts of the case, the decision relied upon by the petitioners do not come to the aid of petitioners.

13. Accordingly, the Civil Revision Petition is dismissed. However, the observations made by the lower appellate Court and herein are only for the purpose of deciding interlocutory application and injunction granted by the trial Court and they do not come in the way of deciding the issue in the suit and uninfluenced by the said observations, but based on the evidence

brought on record, the trial Court shall decide the issue. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

4th February, 2020
Rds

