

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1597 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful appellant/defendant is directed against the order, dated 22.01.2016, of the learned VII Additional District Judge, at L.B.Nagar, Ranga Reddy District, passed in C.M.A.No.26 of 2015, whereby the learned Additional District Judge while dismissing the said appeal confirmed the order and decretal order, dated 12.02.2015, of the learned Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate at Rajendranagar, Ranga Reddy District, passed in I.A.No.495 of 2014 in O.S.No.132 of 2014 filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code requesting to grant a temporary injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of a house bearing door No. 1-137/2 admeasuring 275 square yards with ACC room of a plinth area of 100 square feet in Sy.No.6 of Peerancheruvu village, Rajendranagar Mandal, Ranga Reddy District, morefully described in the schedule annexed to the petition.

2. I have heard the submissions of *Sri K.Raghuveer Reddy*, learned counsel for the revision petitioner/defendant, (hereinafter, 'defendant'), and *Sri N.Ashok Kumar*, learned counsel for the respondent/plaintiff, (hereinafter, 'plaintiff'), and I have perused the material record.

3. The case of the plaintiff in support of his request for grant of temporary injunction, in brief, is as follows:

The plaintiff brought the suit for perpetual injunction and filed the subject application in that suit for grant of a temporary injunction pending final disposal of the suit. The plaintiff is in peaceful possession and enjoyment of the plaint schedule house property having acquired the same from K.Lakshma Reddy and two others under a registered sale deed, dated

08.05.2014, bearing Document No.3282 of 2014. The vendors of the plaintiff, in their turn, purchased a plot admeasuring 1100 square yards under registered sale deed dated 28.12.2006 bearing Document No.18060 of 2006 from its original owners and possessors. The plaintiff's vendors obtained permission to construct ACC room and also a compound wall around the property and obtained a house number for the property. The plaintiff having purchased the schedule property applied to the Gram Panchayat for permission to construct a house. The said application was approved and the Sarpanch of the Gram Panchayat granted permission, vide Permit No.GP/ PC/ 088/ 14, dated 24.7.2014, after the panchayat office received the required charges. After obtaining such permission from the competent authority, the plaintiff started construction activity. When the construction activity was at the initial stage and when pits are being dug for the purpose of raising a multi-storied building, the defendant along with some unsocial elements, who are strangers, demanded huge money from the plaintiff by threatening that he would dispossess the plaintiff from the plaint schedule property by using their illegal force. The plaintiff refused to fulfill their illegal demands. Then, the defendant threatened the plaintiff with dire consequences and damaged some material kept at the plaint schedule property and abused the plaintiff in filthy language. The defendant and the men, who accompanied him, are strangers to the property and they have no manner of right and interest over the same; but, on 15.09.2014, they tried to forcefully and highhandedly dispossess the plaintiff. However, they could not succeed in their illegal demands as the plaintiff could successfully resist their attempts. Immediately, on 16.09.2014, the plaintiff lodged a complaint before the Station House Officer, Narsingi Police Station. The police advised the plaintiff to approach a Civil Court. Again, the defendant accompanied by about 10 to 12 unsocial elements came to the plaint schedule property, on 17.09.2014, and abused the plaintiff as he has given a police complaint and further threatened to dispossess the plaintiff

from the property. However, due to timely intervention of the neighbours and local people, the defendant could not succeed in his illegal attempts. In the circumstances, the plaintiff is constrained to file the suit and the application for temporary injunction.

4. *Per contra*, the case of the defendant, in brief, is this:

The material allegations in the plaintiff's pleadings are false and invented. The allegations that the plaintiff is the owner and possessor of the plaint schedule property having acquired the same as stated in his affidavit and that in turn, his vendors acquired the property under registered sale deed dated 28.12.2006 and that they obtained permission for construction of ACC room and compound wall and obtained house number and that later, the plaintiff obtained permission from the Grampanchayat for making construction of a house and that permission was granted on payment of required fee and that when pits are being dug the alleged interference was made by the defendant along with his men etcetera are all false. The plaint averments that the plaintiff's vendor purchased open plot admeasuring about 1100 square yards and laid out the said land into plots, if true, there should have been layout approved by the competent authority and also a permission for conversion of agricultural land into non-agricultural land. In the absence of any such approved layout and/or permission, the alleged sanctioned plan or permission granted by the Grampanchayat, assignment of house number, assessment to house tax and collection of property tax are all bogus and fraudulent; and, all the documents mentioned by the plaintiff are created for the purpose of grabbing the plaint schedule property in Sy.No.6 of the village, more particularly, the property of this defendant. The plaintiff has not filed a single document to show that the plaintiff's vendors who purchased 1100 square yards have subdivided the property after obtaining necessary permission from the competent authorities. The plaintiff was never in possession of any land or property in Sy.No.6 of Peerancheru village. The plaintiff who is an upa-

Sarpanch of the said village was having influence and, therefore, he created construction permission document and other documents. Originally, the land in Sy.No.6 admeasuring Ac.5.39 guntas was owned and possessed by M.A.Rasheed s/o. M.A.Hadi. He sold the said land in the said survey number to different persons under sale deeds and agreements of sale. He converted some extent of land out of the said land into 25 agricultural plots by obtaining a layout from Peerancheru Gram Panchayat. Out of the said layout, agricultural plots bearing Nos.4 and 5 admeasuring 441 square yards were sold to one Mrs. Mohmin Bee under an agreement of sale dated 02.03.1987 by receiving entire sale consideration and possession of the above said plots was delivered to the said purchaser. Since the date of the said agreement, the said Mohmin Bee continued in exclusive possession and enjoyment of the said two plots. On submitting the said agreement the District Registrar validated the same upon payment of necessary charges by his orders in File No.3117/AR/03, dated 03.07.2003. Mohmin Bee obtained permission vide permission dated 20.09.1995 from the Gram Panchayat, Peerancheru, to construct a house over the said plot. However, due to paucity of funds she did not complete the construction. As such, she approached the Grampanchayat, Peerancheru, for renewal of permission to construct the house and also submitted a plan of the proposed construction. The Gram Panchayat accorded necessary permission and sanctioned the plan by renewing the earlier permission vide its permission proceedings dated 12.08.20303. She constructed a room in the above said two plots. The Gram Panchayat assigned H.No.1-56 to the above said room. The plaintiff is projecting the above House No.1-56 as the plaint schedule property bearing H.No.1-137/2 by filing photographs of the same. The said room is in exclusive possession of this defendant. The panchayat issued a letter dated 05.07.2006 to the Assistant Engineer, Electricity Board, to issue electricity service connection to the above said house and the Electricity Department sanctioned electricity connection to the defendant's property vide Electric

Meter No.311200501; and, from then onwards, the defendant is paying electricity consumption charges to the Department. The original owner, M.A.Pasheed did not execute any registered sale deed in favour of Mohmin Bee and died on 23.01.1988. As such, Mohmin Bee approached the legal heirs of M.A.Pasheed for registration of the sale deed in her favour. The legal heirs of M.A.Pasheed assured to execute a sale deed either in favour of Mohmin Bee or in favour of her nominee. Thereafter, Mohmin Bee out of her personal and family necessities offered to sell the above said property to this defendant and accordingly, Mohmin Bee, her husband, her children along with the legal heirs of the original owner, M.A.Pasheed, executed a registered sale deed dated 19.08.2003, bearing Document No.5769 of 2003, in favour of the defendant in respect of the said house No.1-56; and, since then, this defendant is continuing in peaceful possession and enjoyment of the said house property. In order to grab the said house property of this defendant, at the instigation of the plaintiff, one Dr. Sunitha Chitihoti filed a suit for perpetual injunction in O.S.No.130 of 2013 on the file of the Court of the Additional Junior Civil Judge, Rajahmundry, claiming to be the owner and possessor of the plot admeasuring 90 square yards in Sy.No.6 of Peerancheru village against this defendant and sought a temporary injunction in I.A.No.530 of 2013. The said petition was disposed of as closed on 19.2.2014 and the above said suit is pending. The plaintiff's vendor's vendors, P.Vasundhara and M.Vittal Goud appear to have purchased the above plot admeasuring 1100 square yards from its previous owner, Vasundhara, under a registered sale deed bearing Document No.1191/95 and in turn, Vasundhara purchased the same from its previous owner M.A.Pasheed, represented by his GPA holder, K.Shyam Rao, under registered sale deed dated 13.09.1989, bearing Document No.10893 of 1989. However, the said documents are forged, fabricated and created. The alleged sale deed executed by K.Shyam Rao as GPA of M.A.Pasheed in favour of the alleged vendor of the plaintiff is forged and fabricated. By the date of the said

document, dated 13.09.1989, M.A. Rasheed was no more having passed away on 23.01.1988, as per the Death Certificate issued by Municipal Corporation of Hyderabad. As such, the purchase of Ac.0.34 guntas of land by the vendor of the plaintiff from M.A. Rasheed does not arise. Further, the vendor's vendors Vasundhara and Vittal Goud tried to occupy the defendant's property and when the defendant resisted their illegal demands, they filed O.S.No.1052 of 2009 (Old O.S.No.500 of 2006) on the file of the learned I Additional Junior Civil Judge, Ranga Reddy, for perpetual injunction against the defendant and others in respect of the alleged suit schedule property. This defendant contested the above suit by filing a counter in the IA and written statement in the suit. Later, the plaintiff did not appear before the Court for several years and the said suit was dismissed for default on 16.08.2010. The plaintiffs in the above said suit, Vasundhara and M.Vittal Goud, secretly transferred the above said land to the vendor's vendor of the plaintiff. The plaintiff, who is a local person having political background, deliberately and intentionally purchased the suit schedule property from his vendors by hatching a plan to grab the property. The overt acts alleged in the plaint and attributed to this defendant are false. The plaintiff came to Court with unclean hands and by suppressing material facts and hence, he is not entitled to any relief. No such property as described in the plaint schedule exists in Survey No.6. The plaintiff has no case much less a *prima facie* case. The petition is liable for dismissal being devoid of merit.

5. At the hearing before the trial Court, no oral evidence was adduced. Exhibit P1 to P21 were marked on the side of the plaintiff. Exhibits R1 to R19 were marked on the side of the defendant. On merits, the trial Court allowed the application of the plaintiff. The learned Additional District Judge, by the judgment and decree impugned in this revision, dismissed the CMA preferred by the defendant. Therefore, the aggrieved defendant is before this Court.

6. At the hearing before this Court, the learned counsel for both the sides reiterated the respective contentions of the parties. The learned counsel for the revision petitioner/ defendant while reiterating the case of the defendant, which is stated supra, in detail, contended as follows: 'The plaintiff has no *prima facie* case in view of the earlier litigations in respect of the property and in view of the adverse orders in the earlier litigations passed against the vendors' vendors of the plaintiff herein and in view of the purchase made by the plaintiff with the knowledge of the said adverse orders. M.A.Rasheed, original owner, died even before his GPA holder executed the document being relied upon by the plaintiff. His death on 23.01.1998 is evident from Exhibit P5, death certificate. The Court below ought to have seen that with the death of the principal, the power of the agent under the power of attorney has come to an end. Any document executed by the GPA holder of the deceased would be invalid and such document will not confer any right, title and interest on the purchaser of the property. The sale deed was obtained by the plaintiff's vendors' vendor from the GPA of the said M.A.Rasheed in the year 1989. Hence, the said sale deed is an invalid and fraudulent document. The documents under exhibits P1 to P3 and P14 to P18 are not valid and enforceable documents. When a cloud is cast on the title of the plaintiff, the suit for bare injunction is not maintainable. The Courts below failed to appreciate the pleadings correctly and the documentary evidence in proper perspective and erroneously granted temporary injunction in favour of the plaintiff though neither *prima facie* case nor any other necessary ingredients were established. In view of the earlier suit proceedings and the decree and judgment dated 16.08.2010 in O.S.No.1052 of 2009 and the orders dated 19.02.2014 in I.A.No.530 of 2013 in O.S.No.130 of 2013 wherein adverse orders were passed against the plaintiff and the plaintiff's predecessors in interest, the present suit is not maintainable. The Courts below ought to have seen that the plaintiff suppressed material facts. The documents filed by the plaintiff do

not show that the suit property falls within Sy.No.6 of Peerancheru village. The orders passed on assumptions and surmises are liable to be set aside.'

7. Per contra, the learned counsel for the plaintiff while supporting the orders of the Court below and while reiterating the case of the plaintiff contended as follows: 'Both the Courts below correctly dealt with the pleadings and appreciated the documentary evidence in proper perspective and recorded concurrent findings in favour of the plaintiff holding *inter alia* that the plaintiff established not only possession but also lawful possession and that the plaintiff is having *prima facie* case and made out valid and sufficient grounds for granting a temporary injunction order and accordingly, the trial Court granted a temporary injunction order and the Court below confirmed the said orders. The temporary injunction order was granted on 12.02.2015 and the said order is continuing till date. The contentions of the defendant are devoid of merit. The well considered orders of the Courts below do not brook interference and the revision petition is liable to be dismissed.'

8. I have gone through the pleadings and the documents. I have given earnest consideration to the facts and submissions. Exhibit P1 is the CC of sale deed dated 8.5.2014 bearing Document No.3282 of 2014; exhibit P2 is the CC of sale deed dated 28.12.2006 bearing Document No.18060/ 2006; exhibit P3 is the agreement of sale-cum-GPA dated 28.08.2006; exhibit P4 is the office copy of police complaint dated 16.09.2014; exhibit P5 is the sanctioned plan dated 24.07.2014; exhibit P6 is a bunch of electricity bills and receipts (12 nos.); exhibit P7 is the house tax payment receipt dated 18.03.2014; exhibit P8 is the receipt for publication dated 10.12.2013; exhibit P9 is the house construction permission dated 24.07.2014; exhibit P10 is the no objection certificate dated 24.07.2014; exhibit P11 is the house construction permission fee receipt dated 24.07.2014; exhibit P12 is the postal receipt dated 19.01.2015; exhibit P13 is the legal notice dated 19.01.2015; exhibit P14 is the house construction

permission dated 08.12.2007; exhibit P15 is the house tax payment receipt dated 07.01.2014; exhibit P16 is the no objection certificate dated 08.12.2007; exhibit P17 is the construction permission fee receipt dated 08.12.2007; exhibit P18 is the sanctioned plan dated 08.12.2007; exhibit P19 is the declaration letter issued by Sarpanch dated 09.01.2015; exhibit P20 is a bunch of three photographs with CD; and, exhibit P21 is paper publication in EENADU dated 14.03.2014. Exhibit R1 is the CC of sale deed dated 19.08.2003 bearing Document No.5769/ 2003; exhibit R2 is the encumbrance certificate dated 12.11.2014; exhibit R3 is the requisition for electricity meter dated 05.07.2006; exhibit R4 is the office copy of the police complaint dated 03.09.2014; exhibit R5 is the Death Certificate of M.A.Rasheed, dated 23.01.10983; exhibit R6 is the CC of plaint in O.S.No.1052 of 2009; exhibit R7 is the CC of written statement in OS No.1052 of 2009; exhibit R8 is the CC of judgment and decree in OS No.1052 of 2009; exhibit R9 is the electricity receipt dated 15.12.2014; exhibit R10 is the CC of pahani for the year 1986-87; exhibit R11 is the CC of pahani for the year 1987-88; exhibit R12 is the CC of sale deed dated 13.9.1989 bearing Document No.10839/ 1989; exhibit R13 is the CC of sale deed dated 01.02.1995 bearing Document No.1191/ 1995; exhibit R14 is the permission dated 28.09.1995; exhibit R15 is the house construction permission, dated 12.08.2003; exhibit R16 is the house construction permission fee, dated 12.08.2003; exhibit R17 is the sanctioned plan; exhibit R18 is three photographs with negatives; and, exhibit R19 is the bunch of electricity bills.

9. The plaintiff by virtue of the documentary evidence produced is seeking temporary injunction, pending disposal of the suit, in respect of the house bearing No.1-137/ 2 admeasuring 275 square yards within the boundaries mentioned in the schedule of the plaint situated in Sy.No.6 of Peerancheru village. Exhibit P1 is the sale deed of the plaintiff executed by K.Lakshma Reddy and two others. The property described in the schedule and the plan annexed to the said registered sale deed correspond to the plaint schedule

property wherein there is a room in a built up area of 100 square feet with ACC roof and brick walls. The antecedent title of the vendors was traced in the said Exhibit P1, sale deed, of the plaintiff. The copy of the sale deed of the plaintiff's vendors is Exhibit P2. It is dated 28.12.2006. The schedule of the property therein is 1100 square yards in Sy.No.6 of Peerancheru village and it was described as open plot. There is a plan annexed to the said document. Apart from the said exhibits, it is pertinent to note that the plaintiff also exhibited house tax receipts, sanctioned plans, permissions granted by the Gram Panchayat, No Objection Certificate and electricity consumption receipts in support of the plaintiff's contentions. Exhibit R1 sale deed dated 19.08.2003 of the defendant executed by Mohmin Bee and others in respect of house bearing No.1-56 on Plot Nos.4 and 5 in Sy.No.6 admeasuring 441 square yards with newly constructed ACC roof structure with walls of a plinth area of 100 square feet. A plan is also annexed to the said sale deed of the defendant. Thus, *ex facie*, the properties being claimed by the parties appear to be different and distinct. The boundaries of the plaint schedule property are as under: North: Neighbour's property; South: Part of Open plot of H.No.1-137/ 2; East: Property of Sri Satish Pershad Saxena; West: Part of open plot of H.No.1-137/ 2. Whereas the boundaries of the property covered by Exhibit R1, sale deed, are as under: North: 10' – 0' wide road; South: Plot Nos. 2 & 3; East: Neighbour's; and West: 20' – 0' wide road. Thus, even on verification of the boundaries of the two properties being claimed by the parties, it appears *ex facie* that the properties are different and distinct. Both the Courts having considered the pleadings and the documents of both the parties in juxtaposition and having found that the properties being claimed by the parties *ex facie* are distinct and different and that the defendant could not produce any documents to show that the plaintiff under the guise of this suit is claiming the property of the defendant held in favour of the plaintiff and against the defendant. On the above analysis, this Court finds that there is no irregularity

or illegality or impropriety in the orders of the Court below calling for interference with the interlocutory orders of temporary injunction and that the revision is devoid of merit and is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th January, 2017
RAR

