

THE HON'BLE SRI JUSTICE M. LAXMAN

CIVIL REVISION PETITION No.1087 OF 2022

JUDGMENT:

1. The present civil revision petition has been assailed against the orders dated 31.03.2022 passed in C.M.A. No.25 of 2018 by the VII Additional District Judge, Nirmal, wherein and whereby the order dt. 09.03.2017 passed in I.A. No.144 of 2016 in O.S. No.31 of 2016 was reversed, consequently the application filed by the revision petitioner for grant of temporary injunction pending the suit, was dismissed.

2. The present revision petitioner is the plaintiff and she filed a suit for perpetual injunction in respect of land extent Ac.4-22 gts., in Sy.No.231/A situated at Andakur village, Kuntala Mandal, Adilabad District, hereinafter referred to as “petition schedule property.”

3. It is the case of the revision petitioner that the respondent is the owner of the property and she executed an agreement of sale in the year 2010 (six years back prior to filing of the suit) for sale consideration of Rs.2,50,000/- and entire sale consideration was paid and the petitioner was put in possession of the said land covered under agreement. Ever since, she has been enjoying the property and the revenue authorities have conducted panchanama and confirmed that the revision petitioner was in possession and her name is reflected in revenue records as possessor in respect of petition schedule

property. When the respondent tried to interfere with her possession, she filed the present suit for perpetual injunction.

4. The case of the respondent is that she is the absolute owner of the property and she denied the execution of any agreement of sale and receipt of any sale consideration. According to her, revenue entries are created to favour the revision petitioner and prayed to dismiss the suit.

5. The primary Court on the basis of panchanama and affidavit filed by the revision petitioner, the application for interim injunction was granted restraining the respondent from interfering with the possession of the revision petitioner over the petition schedule property. Aggrieved by the same, the respondent moved Civil Miscellaneous Appeal before the first Appellate Court and Appellate Court after appreciating the evidence on record, reversed the findings of the Primary Court. Aggrieved by the same, the present Civil Revision Petition is filed.

6. The main contention of the learned Counsel for the revision petitioner is that the trial Court has rightly held that she is in possession of the property basing on the revenue entries, such revenue entries reflect her possession over the petition schedule property and such possession was obtained under an agreement of sale executed by the respondent. However, appellate Court without noticing the same, reversed the orders granting temporary injunction; such approach of the Appellate Court is erroneous. The learned Counsel for the respondent submitted that the revision petitioner has not filed

any document to show that there was any agreement of sale. The trial Court without foundational document has granted injunction. It is also his submission that in the pleadings also there is no specific pleading to the effect that when the agreement of sale was executed but stated that it was executed six years prior to the suit. The trial Court basing on the panchanama granted injunction which is against the principles governing granting of injunction. It is also his submission that when the unregistered agreement of sale was relied upon, thereunder possession was delivered, such possession is not protected in view of specific prohibition contained in the Registration Act.

7. Learned Counsel for revision petitioner has relied upon the decision of Hon'ble Supreme Court in **Lakshmi alias Bhagya Lakshmi and another Vs. E. Jayaram (dead) by L.R.**¹ to contend that a person under agreement of sale puts in possession; he is entitled to protect his possession under Section 53-A of Transfer of Property Act. It is not in dispute that the person under agreement of sale is entitled to protect his possession in pursuance of part-performance if he satisfies the requirements of Section 53-A of Transfer of Property Act subject to the condition that it is not prohibited under Registration Act. Such protection was available prior to the amendment of Section 17 of the Registration Act. The facts in the above case are the agreement before the amendment. Therefore, such judgment is not helpful to revision petitioner.

¹ (2013)9 SCC 311

8. Without going into the merits of the case with regard to as to who is in actual possession, it is appropriate to refer Section 17(1A) of the Registration Act which reads as under:

Section 17.**Documents of which registration is compulsory.**

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

9. This amendment was brought into force by Act 48 of 2001. As seen from the above provision, protection which person entitled under Section 53-A of Transfer of Property Act is made available when the agreement of sale is unregistered. In the present case, undisputedly, the agreement under which the revision petitioner is claiming possession is unregistered agreement of sale, which was executed after amendment to Section 17 of Registration Act. Therefore, by virtue of prohibition of any protection under Section 53-A of Transfer of Property Act in respect of possession given under the agreement of sale which is unregistered, any order giving such protection, is in violation of the provision contained under the Registration Act. This aspect was not considered by the Appellate Court, which resulted the present revision. Therefore, on that sole ground, the revision is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

11. As a sequel, pending miscellaneous applications, if any, shall stand closed.

DATE: 06.07.2022
BDR

M. LAXMAN, J