

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P.Nos: 2397 and 2847 of 2022

Civil Revision Petition No.2397 of 2022

Petition under Article 227 of the Constitution of India, against the Order in I.A.No.271 of 2022 in I.A.No.91 of 2022 in O.S.No.114 of 2022 on the file of the Court of the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, at Bhadrachalam.

Between:

Pennada Ramakrishna, S/o Pennada Naganna, Aged about 41 years, Agriculture, R/o H.No.1-23, Vardula Maddikonda, Jammigudem Village, Ashwaraopet Mandal, Bhadradi Kothagudem District.

(Leave granted as per Court Order dated 24-11-2022 in I.A.No.1 of 2022)

...PETITIONER

AND

1. Alla Venkateswara Rao, S/o Apparao, Aged about 70 years, Agriculture, R/o H.No.1-123, Jammigudem Village, Ashwaraopet Mandal, Bhadradi Kothagudem District. **...Petitioner/Plaintiff**
2. Datla Madhu, S/o Ramakrishna, Aged about 35 years, Agriculture, R/o Mustibanda Village, Dammamet Mandal, Bhadradi Kothagudem District.

...RESPONDENTS/PETITIONER/RESPONDENT

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Suspend the operation of the Order dated 29-04-2022 in IANo.91 of 2022 in O.S.No.114 of 2022 on the file of the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court at Bhadrachalam, Bhadradi Kothagudem District, pending disposal of the above CRP.

Counsel for the Petitioner: SRI KONDAPARTHI SRINIVASA

Counsel for the Respondent No.1: Mr. S. SRIDHAR

Counsel for the Respondent No.2: Mr. MANTHA RAJENDRA

Civil Revision Petition No.2847 of 2022

Petition under Article 227 of the Constitution of India, against the Order in I.A.No.91 of 2022 in O.S.No.114 of 2022 on the file of the Court of the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, at Bhadrachalam.

Between:

Pennada Ramakrishna, S/o Pennada Naganna, Aged about 41 years, Agriculture, R/o H.No.1-23, Vardula Maddikonda, Jammigudem Village, Ashwaraopet Mandal, Bhadradi Kothagudem District.

...PETITIONER/THIRD PARTY

AND

1. Alla Venkateswara Rao, S/o Apparao, Aged about 70 years, Agriculture, R/o H.No.1-123, Jammigudem Village, Ashwaraopet Mandal, Bhadradi Kothagudem District. **...Petitioner/Plaintiff**

2. Datla Madhu, S/o Ramakrishna, Aged about 35 years, Agriculture, R/o Mustibanda Village, Dammamet Mandal, Bhadradi Kothagudem District.

...RESPONDENTS/PETITIONER/RESPONDENT

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Suspend the operation of the Order dated 29-04-2022 in IA.No.91 of 2022 in O.S.No.114 of 2022 on the file of the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court at Bhadrachalam, Bhadradi Kothagudem District, pending disposal of the above CRP.

Counsel for the Petitioner: SRI KONDAPARTHI SRINIVASA

Counsel for the Respondent No.1: Mr. S. SRIDHAR

Counsel for the Respondent No.2: Mr. MANTHA RAJENDRA

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P.NO.2397 of 2022

AND

C.R.P.NO.2847 OF 2022

JUDGMENT :

Being aggrieved by the orders of Sub-Divisional Magistrate and Special Assistant Agent to Government, Mobile Court at Badrachalam in IA.No.91 of 2022 and IA.No.271 of 2022 in OS.No.114 of 2022, the petitioner who is a third party to the above referred suit and proceedings filed two separate revision petitions under Article 227 of Constitution of India and sought for setting aside the impugned orders.

2. As could be seen from the material papers filed by the revision petitioner, it appears that one Alla Venkateswara Rao, who is shown as second respondent in the present revisions, filed a suit vide OS.No.114 of 2022 before the Sub-Divisional Magistrate and Special Assistant Agent to Government and sought for a perpetual injunction to restrain one Datla Madhu, who is shown as second respondent herein and his servants, henchmen from interfering with the possession and enjoyment of first respondent over the suit schedule property. Along with the suit, he has filed IA.No.91

of 2022 under Order 39 Rule 1 of Civil Procedure Code (for short 'C.P.C.') r/w 42(C) of A.P. Agency Rules, 1924, and sought for a temporary injunction to restrain the second respondent, his supporters etc., from interfering with plaint schedule property i.e., Ac.12-00 gts of land in Sy.No.51/1 and Ac.03-00 gts of land in Sy.No.16/EE/1 of Jammigudem Revenue Village. The record further shows that when the second respondent herein remained *ex parte*, the learned Sub-Divisional Magistrate passed an order in favour of the first respondent restraining respondent No.2 from interfering with the alleged possession of respondent No.1 over the above referred property.

3. The record further shows that the first respondent filed another Interlocutory Application vide IA.No.271 of 2022 under Order 42 (a & c) A.P./T.S. Agency Rules, 1924 r/w Section 151 of C.P.C., A.P. Agency Rules, 1924 and sought for a direction to the Station House Officer, Aswarao Peta Police Station to provide protection in favour of the first respondent to restrain the second respondent and their agents, servants from interfering with his possession. Even though, there is no mention about the name of the revision petitioner herein in the affidavit filed in support of the above petitions, surprisingly, the learned Sub-Division Magistrate

passed an order in IA.No.271 of 2022 directing the S.H.O. Aswarao Peta to provide protection to the first respondent against the petitioner herein.

4. The petitioner who filed the above referred revision petitions has claimed that when the first respondent filed a suit for perpetual injunction against the second respondent and an interlocutory application for temporary injunction against the second respondent without impleading the petitioner herein as a party to the proceedings, the learned Sub-Divisional Magistrate ought to have seen that the petitioner herein was not a party either in the Interlocutory Application filed for interim injunction or in the suit filed by the first respondent. The first respondent without showing the present petitioner as a party deliberately made the second respondent as a sole defendant in the suit though respondent No.2 was not an interested party in the property covered in the suit. The record clearly shows that respondent No.2 having received the summons did not choose to contest the Interlocutory Application. Therefore, the learned Sub-Divisional Magistrate ought to have seen that the name of petitioner herein was not mentioned in the proceedings and could not have issued a direction to the police concerned to provide

protection against the petitioner. It is also the case of petitioner that the second respondent is not an interested party but an injunction was granted without showing the petitioner herein, thereby, sought for setting aside the impugned orders.

5. Heard both parties.

6. Now the point for consideration is :

Whether the orders passed by the Sub-Divisional Magistrate by which a temporary injunction was granted in favour of the second respondent and a direction to the S.H.O. Aswarao Peta providing police protection against the revision petitioner are liable to be set aside?

7. As could be seen from the impugned orders, it is very clear that the first respondent herein filed the main suit against the second respondent with a specific plea that respondent No.2 was trying to interfere with his property. The record shows that the second respondent who was served with the summons and notices did not appear before the Sub-Divisional Magistrate. As per the order passed by the learned Sub-Divisional Magistrate in IA.No.91 of 2022, it is quite clear that simply because the second respondent did not choose to appear before him, he has passed an injunction order without explaining the grounds under which an interim injunction can be granted, though the 1st respondent was not able to make out a prima-facie case and balance of

convenience to obtain an interim order. Except saying that the Court felt that the first respondent is entitled to an injunction on the basis of material documents, the learned Sub-Divisional Magistrate did not try to find out whether the first respondent was able to make out a prima-facie case and whether the denial of injunction would cause irreparable loss.

8. Similarly, the order of the learned Sub-Divisional Magistrate in IA.No.271 of 2022 shows that simply because there was a temporary injunction in favour of the second respondent which was passed in view of the absence of respondent, who was shown to have made an attempt to interfere with the property, a direction was given to the S.H.O. Aswarao Peta to provide Police Protection by mentioning the name of petitioner herein as friend of the first respondent, thereby, it was deemed that he was a henchmen. Absolutely, there was no reason explained by the Sub-Divisional Magistrate as to how such an order can be passed without showing the petitioner herein as a party to the proceedings and without verifying whether the petitioner herein has got any interest over the property.

9. A perusal of the record clearly indicates that the first respondent having shown an unconcerned person as a

respondent/defendant in OS.No.114 of 2022 and having filed a petition vide IA.No.91 of 2022 under Order 39 Rule 1 & 2 C.P.C. could obtain an *ex parte* temporary injunction and based on the said injunction, he has moved another Interlocutory Application seeking Police Protection for implementing the *ex parte* temporary injunction and was successful in obtaining Police Protection Order against the present petitioner. Absolutely, there was no reason given by the learned Sub-Divisional Magistrate while passing a temporary injunction and the order in IA.No.271 of 2022 is not justified since it is against the petitioner, who is no way concerned with the suit and other proceedings initiated by the first respondent herein. Police Protection was ordered based on a temporary injunction by showing the petitioner herein is a friend of the second respondent who himself did not choose to contest the suit. Therefore, it clearly shows that there was collusion between respondents No.1 and 2 to have an injunction based on which the first respondent could obtain Police Protection, thereby, both the orders are liable to be set aside. The learned Sub-Divisional Magistrate can decide I.A.No.91 of 2022 on merits but no such police protection can be granted on the basis of a temporary

injunction against an unconcerned person. Therefore, revision petitions deserves to be allowed.

10. In the result, both the Civil Revision Petitions are allowed and the impugned orders in IA.No.91 of 2022 and IA.No.271 of 2022 in OS.No.114 of 2022 are set aside.

Consequently, Miscellaneous applications if any, are closed.

No costs.

SD/- A.V.S. PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, at Bhadrachalam.
2. One CC to SRI KONDAPARTHI SRINIVASA, Advocate [OPUC]
3. One CC to Mr. S. SRIDHAR, Advocate [OPUC]
4. One CC to Mr. MANTHA RAJENDRA, Advocate [OPUC]
5. Two CD Copies

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[Handwritten signature]

HIGH COURT

DATED:17/11/2023



JUDGMENT

**CRP.No.2397 of 2022
AND
CRP.No.2847 of 2022**

**THESE CIVIL REVISION
PETITIONS ARE ALLOWED**

⑦
14/12/23
HKT