

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.7 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Civil Miscellaneous Appeal is preferred against the order passed by the Additional District Judge, West Godavari District at Kovvur in I.A.No.368 of 2014 in O.S.No.19 of 2014. The appellant herein is the plaintiff in the Suit, and the petitioner in the I.A. He filed O.S.No.19 of 2014 seeking the relief of declaration of title to the suit schedule property, and to restrain the respondents-defendants by way of permanent injunction from interfering with his peaceful possession and enjoyment thereof. In the I.A., he sought temporary injunction restraining the respondents from interfering with his peaceful possession.

The petitioner and the first respondent herein are husband and wife. Respondent Nos.2 and 3 are the parents of the first respondent; and the fourth respondent is the grandfather of the first respondent. The petitioner is residing in the United States of America. He gave a power of attorney to Sri U.Srinivas Rao of Pendurthi Mandal of Visakhapatnam District to take care of the suit schedule property which stands in his name, but is located at R.S.No.114 of Devarapalli village where the respondents reside.

In the order under appeal, the Court below initially held that, as the respondents were permanent residents of Devarapalli village where the subject property was situated, the possibility of their possession and control over the property was more probable. On the ground that the title of the property was in the name of the petitioner, and possession of the property was with the respondents, the Court below directed both parties to maintain *Status quo*, not to alienate or raise any construction over the suit schedule property, and to keep

the site vacant.

Sri K.Chidambaram, learned counsel for the petitioner, would submit that the Court below had erred in holding that the petitioner had given a general power of attorney in favour of his father who is residing at Visakhapatnam; the power of attorney was given by the petitioner to Sri U.Srinivas Rao, and not in his father's favour; the mere fact that the property is located at Devarapalli, does not necessitate the conclusion that the respondents are in possession of the property; and, even without there being any evidence on record, the Court below had erroneously observed that possession was with the respondents merely on the ground that they were residing in the very same village where the suit schedule property is located.

On the other hand, Sri Sai Gangadhar Chamorthy, learned counsel for the respondents, would submit that the petitioner resides in the United States of America; his power of attorney holder is also a resident of Visakhapatnam District and could not, therefore, claim to be in peaceful possession of the suit schedule property which is located in Devarapalli village of West Godavari District; the respondents are residing at Devarapalli village, and have obtained a water tap connection on the subject plot; they produced the water tap connection receipt dated 19.08.2014 along with third party affidavits before the Court below to show that they were in possession; and the Court below was justified in coming to the conclusion that it is they, and not the petitioner, who were in possession of the suit schedule property.

While the respondents, no doubt, filed Exs.R1 to R3 (water tap connection receipts and third party affidavits), the order of the Court below does not deal with any of the exhibits filed both on behalf of the petitioner and the respondents. The finding, that the respondents are in possession, has been arrived at without analyzing the documentary

evidence placed before the Court. As the petitioners have filed Exs.P1 to P12, and the respondents Exs.R1 to R16, it is but appropriate that the Court below examines all the documents and, thereafter, decides as to who is in actual possession of the suit schedule property.

The order under appeal is set aside, and the matter is remanded to the Court of the Additional District Judge, West Godavari District at Kovvur, who shall consider the rival submission of counsel on either side; and pass orders afresh, in I.A.No.368 of 2014 in O.S.No.19 of 2014, in accordance with law.

The Civil Miscellaneous Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

02nd March, 2015.

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