

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

I.A.No.1 of 2023
in/and
C.R.P.No.191 of 2023

COMMON ORDER:

The defendants in O.S.No.561 of 2022 on the file of the Principal Junior Civil Judge at Gajwel have filed this Civil Revision Petition under Article 227 of the Constitution of India, assailing the impugned docket order dated 06.01.2023 in I.A.No.1358 of 2022 in O.S.No.561 of 2022.

2. The respondent/plaintiff has filed the original suit against the defendants for perpetual injunction in respect of open plot admeasuring 230.90 square yards in Survey No.374 situated at Gajwel Town and Mandal, Siddipet District, hereinafter referred to as "suit schedule property", alleging that she has purchased the same through a registered sale deed document No.2177 of 2017 dated 22.04.2017 and obtained permission from the Gram Panchayat, Gajwel for construction of ground floor building, as per the proceedings No.38422/GAJW/0144/2021, dated 23.08.2021. When she started digging pits in

the suit plot, on 15.11.2022 and 25.11.2022 the defendants tried to obstruct the plaintiff from carrying with construction work. As such, she has filed the original suit for perpetual injunction against the defendants and any other person on their behalf from interfering with her peaceful possession and enjoyment over the suit schedule property. Along with the original suit, she has also filed I.A.No.1358 of 202 under Order-39 Rules 1 and 2 of C.P.C. for temporary injunction restraining the defendants from interfering with her possession over the suit schedule property, pending disposal of the suit.

3. The original suit along with I.A.No.1358 of 2022 was filed on 02.12.2022 and on the same day, the learned Principal Junior Judge has passed the following order:

“Upon motion made unto this Court on this day by Sri B. Gopal Rao, counsel for the petitioner/plaintiff and upon perusing the contents of the affidavit filed in support of the petition, pleadings and other material produced by the petitioner/plaintiff and upon hearing the said counsel this Court doth order that an ex parte ad-interim injunction be granted in favour of the petitioner/plaintiff restraining the respondents/defendants 1 & 2 from interfering with

peaceful possession and enjoyment of petitioner over petition schedule properties in any manner till filing of counter.

This case stands posted to 04.01.2023.

Given under my hand and the seal of this Court on this the 2nd day of December, 2022”

4. Thereafter, the defendants have filed counter in I.A.No.1358 of 2022 on 28.12.2022 and written statement in the original suit on 06.01.2023. They have also filed an application in I.A.No.1419 of 2022 under Order-39 Rule-4 read with Section 151 of C.P.C. on 30.12.2022 with a prayer to discharge or vary the order dated 02.12.2022 in I.A.No.1358 of 2022 and to preserve the suit property as it is without any construction by either side, till disposal of IA No.1358 of 2022 and by 06.01.2013 counter was also filed by the plaintiff in the said I.A. No.1419 of 2022. But, without considering all these aspects, the learned judge of the trial Court has extended the *ex parte* temporary injunction order dated 02.12.2022, through the impugned docket order dated 06.01.2023 extracted as under:

“Docket order dated 06.01.2023:

Heard. The counsel for the respondent raised an objection that the applies is filed under Order-XXXIX Rule-4, however, file the decide of the petition 39 Rule 4 injuncton is order I am extended.

Sd/-
Principal Junior Civil Judge,
Gajwel”

5. Be it stated that it is a slipshod order passed mechanically in a most incomprehensible language against the scheme and spirit of Order-39 of CPC without assigning any reasons. Feeling aggrieved by the same, the defendants have filed Civil Revision Petition.

6. Heard the learned counsel for the revision petitioners and respondent, the submissions made on either side have due consideration of this Court.

7. For the sake of convenience, the parties are hereinafter referred to as “plaintiff and defendants” as arrayed in the original suit.

8. The learned counsel for the revision petitioners/ defendants strenuously contends that initially the order in

I.A.No.1358 of 2022 was only passed till filing of the counter and the case was posted to 04.01.2013 and that the defendants have filed the counter on 28.12.2022 itself. As such, once the counter is filed, the orders in I.A.No.1358 of 2022 ought to have been vacated by the trial Court. But, instead of vacating the same, despite filing an application in I.A.No.1419 of 2022 to vary or discharge the said orders till the disposal of I.A.No.1358 of 2022, the trial Court has passed the impugned order dated 06.01.2023 extending the *ex parte* temporary injunction order dated 02.12.2022 indefinitely. He would further contend that the plaintiff has filed counter in I.A.No.1419 of 2022 on 06.01.2023 and the trial Court ought to have disposed of either I.A.No.1419 of 2022 or I.A.No.1358 of 2022, but mechanically extended the *ex parte* temporary injunction order dated 02.12.2012, thereby allowing the plaintiff to proceed with the construction.

9. *Per contra*, the learned counsel for the respondent/plaintiff submits that the plaintiff has purchased suit plot, through a registered sale deed

document dated 22.04.2017, she has also obtained electricity connection, obtained permission dated 23.08.2021 from the Gram Panchayat, Gajwel for construction of house. When she started construction, only to harass her without any right over the suit property the defendants interfered with her possession, thereby she was compelled to approach the Court and obtained temporary injunction and it is not that she has raised construction only on obtaining the temporary injunction. The learned counsel for the respondent/plaintiff further submits that the photographs filed by the revision petitioners itself show that construction activity in the suit schedule property is in progress and it was commenced much before filing of the suit, hence the question of raising structures under the guise of *ex parte* injunction order does not arise.

10. The narration of the facts in the preceding paragraphs and the submissions made by the learned counsel on either side discloses that the trial Court has granted *ex parte* temporary injunction in I.A.No.1358 of

2022 on 02.12.2022 only till filing of the counter and directed to list that I.A. on 04.01.2023.

11. Further, the record speaks that before 04.01.2023 itself i.e., on 28.12.2022 the defendants have filed their counter in I.A.No.1358 of 2022. In addition to it, they have also filed I.A.No.1419 of 2022 under Order-39 Rule-4 C.P.C. on 30.12.2022 alleging that under the guise of *ex parte* temporary injunction, the plaintiff is proceeding with construction by changing the nature of suit schedule property and that as per the pleadings in the plaint, it is shown as only open plot, but the photographs filed would show that the plaintiff has raised pillars up to roof level and brick walls etc., and prayed for varying or discharging the orders dated 02.12.2022. It is pertinent to note that by 06.01.2023 the plaintiff has filed counter in I.A.No.1419 of 2022 and the defendants also filed written statement in the original suit and counter in I.A.No.1358 of 2022, but the trial Court ignoring all these facts simply passed the impugned docket order on 06.01.2023 extending the *ex parte* temporary injunction order.

12. The sole grievance of the defendants is that taking undue advantage of *ex parte* injunction order dated 02.12.2022 extended on 06.01.2023, the plaintiff is trying to change the very nature of the suit plot and it is for this reason the defendants have filed I.A.No.1419 of 2022 under Rule-4 of Order-39 C.P.C.

13. A perusal of the impugned order dated 06.01.2023 discloses the non-application of mind of the trial Court, it was not inclined to pass any orders in the application filed under Order-39 Rule-4 C.P.C. though by that time counter was filed in I.A.No.1419 of 2022 and also in I.A.No.1358 of 2022, simply the earlier *ex parte* injunction order was extended. The view taken by the trial Court in this regard does not appear to be in conformity with Rule-4 of Order-39 C.P.C.

14. From a bare reading of Rule-4 C.P.C. and on consideration of the entire scheme contained in Order-39 C.P.C., it is evident that once *ex parte* order of temporary injunction by dispensing with notice as provided under

Rule-3 C.P.C., is granted, the Court is conferred with the power to dispose of the application finally, as provided for in Rule-3 (A) of C.P.C., after hearing the parties. Whereas, the Rule-4 contemplates situation where certain modifications or discharge of the order of an *ex parte* injunction is warranted before the application filed under Order-39 Rules 1 & 2 C.P.C. is disposed of only to meet such contingency, the power is conferred on the Court under Order-39 Rule-4 C.P.C. to vary, set aside or discharge the *ex parte* injunction order. Such variation or discharge may be as a measure of disposal of the I.A. or as an interim measure, pending disposal of the application. A reading of the provisos 1 & 2 of Rule-4 C.P.C. supports such view and it does not indicate that discharge or variation of temporary injunction shall be as a final measure alone.

15. In the instant case, the defendants have filed their counter in main I.A.No.1358 of 2022 on 28.12.2022 i.e., before 04.01.2023 itself. They have also filed I.A.No.1419 of 2022 on 30.12.2012 itself, for which counter

was filed by the plaintiff on 06.01.2023. There were no other interlocutory applications pending in I.A.No.1358 of 2022, but without considering all these facts, the trial Court has mechanically extended the *ex parte* temporary injunction order indefinitely, through the impugned docket order dated 02.12.2022, which is against the scheme and spirit of Order-39 Rules 1 to 4 of C.P.C. As such, the impugned docket order dated 06.01.2023 cannot sustain and it is liable to be set aside by exercising the jurisdiction under Article 227 of the Constitution of India.

16. Therefore, for all the reasons stated above, considering the facts and circumstances of the case, the Civil Revision Petition along with I.A.No.1 of 2023 is allowed by setting aside the impugned docket order dated 06.01.2023 in I.A.No.1358 of 2022 in O.S.No.561 of 2022 on the file of the Principal Junior Civil Judge at Gajwel. Consequently, I.A.No.1419 of 2022 shall stand disposed of directing both the parties to the suit shall maintain *status quo* obtaining as on today, till disposal of I.A.No.1358 of 2022. The trial Court shall make every endeavour to

dispose of I.A.No.1358 of 2022 as early as possible and under any circumstances not later than two weeks from today. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending in this civil revision petition, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 25.01.2023

Note: Issue CC by tomorrow.
(B/o.) Isn

***THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY**

+ IA No.1 of 2023 in/and CRP No.191 of 2023

% 25-01-2023

Komuravelly Kaladhar
and another
v.

.. Petitioners

\$ Kommareddy Swarnalatha

.. Respondent

! Counsel for the petitioners: Sri S. Srinivasa Rao

Counsel for the Respondent: Sri Vennamraj Venkateshwar Rao

< Gist:

> Head Note:

? Cases referred:

Nil