

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ CIVIL REVISION PETITION No.3637 of 2023

% Dated 11.01.2024

Juvvaji Ravinder
S/o Late Somaiah Aged about 46 Yrs
Occ Agriculture R/o Eeravenu Village
Palakurthy Revenue Mandal
Jangaon District and another

... Petitioners

VERSUS

\$ Jakkula Pushpaleela
W/o Late Ilaiah Aged about 62 Yrs
Occ House hold and Agriculture
R/o Eeravenu Village
Palakurthy Revenue Mandal
Jangaon District

... Respondent

! Counsel for petitioners : Sri Veera Babu Gandu

^ Counsel for Respondent : Sri Chalakani Venkat Yadav

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2008 (4) SCC 594
2. (2019) 17 SCC 692
3. 2021 SCC OnLine 675
4. Civil Appeal No.1382 of 2022

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO
CIVIL REVISION PETITION No.3637 of 2023

ORDER:

This revision petition is filed aggrieved by the orders passed by the Principal District Judge at Jangaon in C.M.A.No.61 of 2022 dated 17.10.2023 confirming the orders passed by the Additional Junior Civil Judge at Jangaon in I.A.No.7 of 2021 in O.S.No.8 of 2021 dated 16.04.2021 invoking the provisions of Article 227 of the Constitution of India.

2. The revision petitioners herein are defendants and the respondent is plaintiff in O.S.No.8 of 2021. For the sake of convenience the parties herein are referred to as they are arrayed in the suit in O.S.No.8 of 2021 before the trial Court.

3. **Brief facts of the case:**

3.1. The plaintiff filed suit in O.S.No.8 of 2021 on the file of the Additional Junior Civil Judge at Jangaon seeking perpetual injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property. Along with the said suit, the plaintiff filed application in I.A.No.7 of 2021 seeking temporary injunction invoking the provisions of Order XXXIX Rules 1 and 2 of C.P.C. contending that the husband of the plaintiff was absolute owner and possessor of the suit schedule property i.e., agricultural land to an

extent of Ac.2.00 gts in Sy.No.486/45, situated at Eeravennu Village of Palakurthy Revenue Mandal, Jangaon District and the revenue authorities have granted assignment patta in his favour and his name was mutated in the revenue records and also issued pattadar pass book in the year 1975-76 and her husband died on 15.11.2020, after his death, she succeeded the property and she is in possession and enjoyment of the suit schedule property and doing cultivation and eking out her livelihood. She further stated that defendants, without having any manner of right, are trying to interfere and dispossess the plaintiff from the suit schedule property.

3.2. The defendants filed counter-affidavit denying the allegations made by the plaintiff *inter alia* contending that husband of the plaintiff sold the suit schedule property in favour of father of defendant No.1 through un-registered agreement of sale dated 03.03.2008 by receiving the total sale consideration and delivered the possession of the suit schedule property and since then they have been in possession of the said property. In spite of several requests made by the defendants, the husband of the plaintiff has not come forward to execute the sale deed. They further stated that they are doing cultivation by raising paddy, groundnuts, vegetables, etc., and also they got electricity connection. The plaintiff is not in possession of the suit schedule property, therefore, she is not entitled to grant temporary injunction.

3.3. The trial Court after hearing both the parties and taking into consideration the documentary evidence Exs.P.1 to P.8 and Exs.R.1 to R.4, allowed the application and granted temporary injunction in favour of the plaintiff till the disposal of the suit *vide* its order dated 16.04.2021.

3.4. Aggrieved by the same, the defendants filed C.M.A.No.61 of 2022 on the file of Principal District Judge at Jangaon. The lower appellate Court dismissed the appeal and confirmed the order passed by the trial Court by its order dated 17.10.2023. Aggrieved by the same, the defendants filed the present Civil Revision Petition.

4. Heard M. Rathan Singh, learned counsel, representing Sri Veera Babu Gandu, learned counsel for the petitioners/defendants, and Sri Chalakani Venkat Yadav, learned counsel for the respondent/plaintiff/caveator.

5. Learned counsel for the defendants vehemently contended that the suit filed by the plaintiff for seeking perpetual injunction is not maintainable on the ground that the defendants are disputing the title of the plaintiff over the suit schedule property. In such circumstances, the plaintiff ought to have filed a suit for declaration, when the suit itself is not maintainable and the Courts below ought not to have granted temporary injunction in favour of the plaintiff. He further contended that the plaintiff has not satisfied the ingredients of Order XXXIX Rules

1 and 2 C.P.C. i.e., *prima facie* case, balance of convenience and irreparable injury and in spite of the same, the trial Court granted temporary injunction and the same is contrary to law. He further contended that the defendants have filed documents i.e, Exs.R.1 to R.4 to establish their right and possession of the suit schedule property. The trial Court without considering those documents granted temporary injunction in favour of the plaintiff.

5.1. He also contended that the plaintiff is not in possession of the suit schedule property as on the date of institution of suit, on the other hand, the defendants are only in possession of the suit schedule property and under the guise of temporary injunction granted by the trial Court, the plaintiff is trying to enter into the suit schedule property high-handedly and the Station Houser Officer, Palakurthy P.S registered a case in Crime No.8 of 2023 and after conducting investigation filed a charge sheet, wherein it is specifically stated that the defendants are in possession of the suit schedule property, and the said documents i.e., charge sheet and statements under Section 161 of the Cr.P.C. were filed before the lower appellate Court, but, without considering those documents, simply confirmed the order of the trial Court. He further contended that the lower appellate Court, which is a fact finding final Court ought to have appreciated the contentions of the defendants and documentary evidence on record afresh.

5.2. In support of his contention, learned counsel relied upon the following judgments:

1. **Anathula Sudhakar v. P.Buchi Reddy (dead) by Lrs. And others¹**
2. **Jharkhand State Housing Board v. Didar Singh and another²**
3. **Kayalulla Parambath Moidu Haji v. Namboodiyil Vinodan³**
4. **Padhiyar prahladji Chenaji (Deceased) through LR.s v. Maniben Jagmalbhai (Deceased) through LR.s and Ors⁴.**

6. *Per contra*, learned counsel for the plaintiff contended that the defendants are not having any manner of right over the suit schedule property and the alleged agreement of sale Ex.R-1 is not genuine one. The suit schedule property is a government assigned land and as per the provisions of the Telangana Assigned Lands (Prohibition of Transfers) Act, 1977, (for short, 'Act 9 of 1997) the said land is not alienable, only heritable. Hence, the defendants are not entitled to claim any rights over the suit schedule property basing on the alleged agreement of sale dated 03.03.2008 and the same is hit by the provisions of Act 9 of 1997.

¹ 2008 (4) SCC 594

² (2019) 17 SCC 692

³ 2021 SCC OnLine 675

⁴ Civil Appeal No.1382 of 2022

6.1. He further contended that the plaintiff had established her case by producing documentary evidence Exs.P.1 to P.8 that she is in possession of the suit schedule property as on the date of institution of the suit. The trial Court after considering the contention of both parties and documentary evidence on record granted temporary injunction in favour of the plaintiff by giving cogent reasons and the lower appellate Court rightly confirmed the orders of the trial Court. He also contended that the defendants are not entitled to rely upon the subsequent documents i.e., F.I.R. and charge sheet and statements recorded under section 161 of Cr.P.C. filed in criminal case in S.C.No.77 of 2023 on the file of the VII Additional District and Sessions Judge (SC/ST Cases) at Warangal to claim any rights over the suit schedule property and those documents cannot be taken into consideration in the civil proceedings.

7. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it clearly reveals that the plaintiff filed suit in O.S.No.8 of 2021 for seeking perpetual injunction restraining the defendants from interfering with the suit schedule property, along with the said suit, she also filed application in I.A.No.7 of 2021 for grant of temporary injunction invoking the provision of Order XXXIX Rules 1 and 2 C.P.C. The specific claim of the plaintiff is that during the life time of her husband, the revenue authorities have granted assignment patta in his favour in the year 1975-76 and since then he has been in possession and enjoyment

of the suit schedule property and his name was mutated in the revenue records and pattadar pass book and title deeds were issued. The husband of the plaintiff died on 15.11.2020 and after his death, the plaintiff has been in possession of the suit schedule property by way of succession and the defendants, without having any manner of right, trying to interfere with her possession and to establish her claim, she filed documents Exs.P.1 to P.8.

8. Whereas, the defendants are claiming the rights over the property basing upon the un-registered agreement of sale dated 03.03.2008 executed by husband of the plaintiff and in support of their claim, they filed Exs.R.1 to R.4. The trial Court, after considering the contentions of the respective parties and Exs.P.1 to P.8 and Exs.R.1 to R.4, allowed the application and granted temporary injunction, specifically holding that the plaintiff is in possession of the suit schedule property by its order dated 16.04.2021. Aggrieved by the same, the defendants filed C.M.A.No.61 of 2022 before the Principal District Judge at Jangaon. The lower appellate Court after considering the grounds, documentary evidence on record and after hearing both the parties, passed the impugned order dismissing the appeal and confirmed the order of the trial Court, by its order dated 17.10.2023.

9. It is very much relevant to place on record that for grant of temporary injunction, the parties have to establish *prima facie* case, balance of convenience and irreparable injury as enumerated under the

provisions of Order XXXIX Rules 1 and 2 of C.P.C. and to satisfy the above said ingredients, the plaintiff had filed documents Exs.P.6 and P.7- Computer generated 1-B RoR Namoonaa dated 05.01.2021 and Computer generated Dharani Portal Land Records respectively. Whereas, the defendants have not filed any documents in support of their claim that they are in possession of the suit schedule property as on the date of institution of the suit. The trial Court specifically stated that Exs.R.2 to R.4 documents nowhere disclosed that they are connected to the suit schedule land, except Ex.R.1 un-registered agreement of sale as the said document pertaining to the year 2008. It is also relevant to mention here that the defendants are relying upon the document i.e., charge sheet and statements recorded under Section 161 of Cr.P.C. in S.C.No.77 of 2023, but the said documents are subsequent to institution of the suit and the above said S.C.No.77 of 2023 is pending before the VII Additional District and Sessions Judge (SC/ST Cases) at Warangal. Therefore, the said documents cannot be taken into consideration at this point of time.

10. Insofar as contention of the learned counsel for the defendants that when the defendants are disputing the title of the plaintiff, simple suit for perpetual injunction is not maintainable under law and the plaintiff has to file suit for declaration is concerned the plaintiff has filed a suit seeking perpetual injunction basing upon her possession and she

is not seeking any other relief, and the relief sought by the plaintiff falls under the provisions of Section 38 of Specific Relief Act, 1963.

11. In the judgments relied upon by the learned counsel for the defendants, it is stated that when the defendant raises a genuine dispute with regard to title and when a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction and the said principles are not applicable to the facts and circumstances of the case, on the sole ground that plaintiff filed a suit for perpetual injunction. Similarly the above said judgments arise out of final judgment and decree was passed in the suit, whereas in the present case the suit is still pending. It is also relevant to mention here that in a suit for perpetual injunction, the most relevant issue is whether the plaintiff is in possession of the suit schedule property as on the date of filing of the suit or not. The relief of injunction is discretionary and the title aspect cannot be gone into. In the case on hand, the defendants are claiming rights over the suit schedule property basing upon unregistered agreement of sale dated 03.03.2008 and the plaintiff is disputing the said document.

12. It is also relevant to place on record that the contentions raised by the learned counsel for the defendants that (i) whether the simpliciter suit for perpetual injunction is maintainable, without seeking relief of declaration, (ii) whether the unregistered agreement of sale dated 03.03.2008 relied upon by the defendants is genuine or not and is

admissible in evidence or not, all the above said aspects have to be decided and determined in the main suit after full-fledged trial only and these aspects cannot be decided at this stage.

13. For the foregoing reasons, this Court does not find any irregularity, illegality or jurisdictional error to interfere with the impugned order passed by the lower appellate Court in C.M.A.No.61 of 2022 dated 17.10.2023 confirming the orders passed by the trial Court in I.A.No.7 of 2021 in O.S.No.8 of 2021 dated 16.04.2021 to exercise the powers conferred under Article 227 of the Constitution of India.

14. Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is directed to dispose of the main suit i.e., O.S.No.8 of 2021 as early as possible, preferably, within a period of Six (6) months from the date of receipt of a copy of this order, on own merits, uninfluenced by any of the observations made in this order or in the impugned orders and both the parties are directed to cooperate with the trial court for disposal of the suit. No costs

In view of dismissal of civil revision petition, interlocutory applications pending, if any, shall stand closed.

J.SREENIVAS RAO, J

Date:11.01.2024

L.R. copy to be marked – Yes.

mar/psw