

**THE HON'BLE SRI JUSTICE B.SESHASAYANA  
REDDY**

**C.R.P No.3345 of 2010**

**Date:31.12.2010**

**Between:**

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C.Girijanath

-

.....Petitioner/Appellant.

**And**

Chennama Raju Mhanumurthy and another.

.....  
Respondent/plaintiff.

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**THE HON'BLE SRI JUSTICE B.SESHASAYANA  
REDDY**

**C.R.P No.3345 of 2010**

**ORDER:**

This revision is directed against the judgment dated 31.5.2010 passed in C.M.A.No.32 of 2008 on the file of the Family Court-cum-Additional District Judge at Mahaboobnagar, whereby and whereunder the learned Additional District Judge dismissed the appeal filed under Order 43, Rule 1 (r) C.P.C assailing the order dated 1.8.2008 passed in I.A.No.779 of 2007 in O.S.No.243 of 2007 on the file of the Junior Civil Judge, Shadnagar.

2. The 1<sup>st</sup> respondent herein is plaintiff and whereas the petitioner and the 2<sup>nd</sup> respondent herein are the defendants in O.S.No.243 of 2007. The plaintiff filed the

suit for injunction simplicitor in respect of the suit house bearing No.7-89 (5-39/1 old) together with open place admeasuring 150 square yards situated at Kondurg Village and Mandal, Mahaboobnagar District. He also moved I.A.No.779 of 2007 under Order 39, Rules 1 & 2 read with Section 151 CPC seeking for temporary injunction. It is the plea of the plaintiff that he got the suit house under a Will deed dated 10.10.1990 executed by Sudhakara Rao. He got not only the suit house but also other properties of Sudhakar Rao. According to him, he got the house mutated in his name in the Grama Panchyat records.

3. The 2<sup>nd</sup> defendant resisted the application claiming the suit property under a Will executed by the second wife of Sudkhakar Rao on 11.11.1997.

4. The plaintiff filed nine documents to to prove his possession over the suit property as on the date of filing of the suit. Whereas, the 2<sup>nd</sup> defendant filed 17 documents to prove of his possession over the suit schedule house.

The learned Junior Civil Judge, on considering the material brought on record and on hearing the counsel appearing for the parties, came to the conclusion that the plaintiff made out a *prima facie* case and balance of convenience in his favour and thereby proceeded to grant temporary injunction by order dated 1.8.2008. Relevant portion of the order reads as hereunder:-

“The 2<sup>nd</sup> respondent on his behalf has filed Ex.B1 which consists of [11] electricity bills and one electricity payment receipt. However, a perusal of the same no doubt, indicates the name of the 2<sup>nd</sup>

respondent herein but they do not specifically mention that they pertain to the suit schedule house bearing No.7-89 new [5-39/1 old] of Kondurg village Ex.B2 to Ex.B7 are the telephone bills in the name of the 2<sup>nd</sup> respondent and all of them show address of the 2<sup>nd</sup> respondent as house No.6-17, Kondurg village. No where in Ex.B2 to Ex.B7 the address of the respondent is shown as the resident of the suit house. Ex.B8 is the original Will deed dated 11-11-1997 in favour of the 2<sup>nd</sup> respondent said to have been executed by C.Pushapavalli. Ex.B9 to Ex.B12 are the letters addressed by the 2<sup>nd</sup> respondent to the Sarpanch, Kondurg requesting not to grant permission for construction of house in respect of House No.12-42, 6-17, 12-42/1, 6-17/1 and for change of the name of the house bearing No.12-41 from the name of C.Pushpavalli in the name of the 2<sup>nd</sup> respondent, raising objection for payment of tax for the 2<sup>nd</sup> time by some 3<sup>rd</sup> parties in respect of house No.12-41 and

for raising objections for granting permission for construction of house to some 3<sup>rd</sup> party on some bogus documents etc respectively. It is significant to notice that none of the documents under Ex.B9 to Ex.B12 would categorically show that only claim is made by the 2<sup>nd</sup> respondent in respect of the suit schedule property to the Sarpanch, Grampanchyat.

The said documents are conspicuous by their absence about the number of the suit house No.7-89 new 5-39[1] as mentioned in the plaint. Ex.B13 and Ex.B14 are the tax receipt and house ownership certificate in respect of House No.6-17 of Kondurg in the name of C.Pushpavalli, which are dated 9-2-1991 and 15-4-1991 respectively. Interestingly, there is no mention of the suit schedule property either in Ex.B13 or Ex.B14 or that they depict that the said amount under Ex.B13 has been paid by the 2<sup>nd</sup> respondent herein but on the contrary, they would make it evident that the tax for the house No.6-17 has been paid by the said Pushpavalli who is shown as owner of the

said house under Ex.B14. As noticed above, Ex.B14 also does not pertain to the suit schedule property and house number. Ex.B15 and Ex.B16 are the legal notice issued on behalf of the father of the petitioners to the 2<sup>nd</sup> respondent dated 20-11-2000 and the reply notice dated 14-12-2000 respectively. Ex.B17 is the ration card in the name of the 2<sup>nd</sup> respondent, which is issued on 20-2-2007 showing him to be the resident of house No.7-89/1. Therefore, on a perusal of the documentary evidence filed on behalf of the 2<sup>nd</sup> respondent as noticed hereinbefore, except Ex.B17 which is issued on 20-2-2007, other documents do not in any way specifically show the possession or ownership of the 2<sup>nd</sup> respondent over the suit schedule property. However, insofar as Ex.B8 is concerned which is the gift deed, this court is not recording any finding therein as its authenticity and genuineness have to be established during the course of trial in the main suit along with Ex.A1 which is filed

by the petitioner.”

5. The 2<sup>nd</sup> defendant filed C.M.A.No.32 of 2008 assailing the order passed in I.A.No.779 of 2007 in O.S.No.243 of 2007.

The learned Additional District Judge, on reappraisal of the material brought on record and on hearing the counsel appearing for the parties, came to the conclusion that the 2<sup>nd</sup> defendant/appellant failed to make out any valid ground to interfere with the order passed by the trial Court in granting temporary injunction and thereby proceeded to dismiss the appeal by judgment dated 31.5.2010.

The said judgment is assailed in this revision.



6. Heard learned counsel appearing for the appellant/2<sup>nd</sup> defendant and learned counsel appearing for the 1<sup>st</sup> respondent/plaintiff.

7. Learned counsel appearing for the petitioner/2<sup>nd</sup> defendant submits that the appellate Court mistook the date of Ex.B7 and thereby erred in dismissing the appeal.

According to the learned counsel, Ex.B17 has been obtained much prior to the filing of the suit, and whereas the observation of the appellate Court is that the petitioner/2<sup>nd</sup> defendant obtained Ex.B17 after filing of the suit. Indisputably, Ex.B17 is dated 20.2.2007. The suit came to be filed subsequently Ex.B17. Even assuming that Ex.B17 is obtained prior to the filing of the suit, whether the petitioner/2<sup>nd</sup> defendant has substantiated his

plea of possession over of the suit property. Ex.B17 is the household card. Mere mentioning of the house number in the household card is not enough to draw a conclusion that the house mentioned therein is in occupation of the holder of the card.

8. The learned counsel appearing for the 1<sup>st</sup> respondent/plaintiff supported the order impugned in the revision.

9. On behalf of the 1<sup>st</sup> respondent/plaintiff, nine documents have been marked and whereas, on behalf of the petitioner/2<sup>nd</sup> defendant, 17 documents have been marked before the trial Court. Both the parties are claiming the properties under unregistered wills. One executed by Sudhakar Rao infavour of the 1<sup>st</sup> respondent/plaintiff and another one executed by the

second wife of Sudhakar Rao infavour of the petitioner/2<sup>nd</sup> defendant. Validity or otherwise of the wills are required to be examined in the appropriate proceedings. Since the suit being injunction simplicitor, the only issue is with regard to the possession of the suit property. The 1<sup>st</sup> respondent/plaintiff placed on record the Ownership Certificate and House Tax Payment Receipt issued by the Sarpanch of Gram Panchayat, Kondurg.

10. All these documents *prima facie* speak of the possession of the 1<sup>st</sup> respondent/plaintiff over the suit schedule house. The trial Court as well as the Appellate Court considered the documents of the defendants and came to the conclusion that except Ex.B.17, the other documents do not indicate of the petitioner being in

occupation of the suit schedule house. The only document, somewhat relevant is Ex.B17-household card.

As I stated supra, mere mentioning the name in the household card is not sufficient to draw inference that the holder of the card is in occupation of the house stated therein.

The trial Court and the appellate Court considered the material brought on record and granted temporary injunction infavour of the 1<sup>st</sup> respondent/plaintiff. I do not see any illegality or irregularity in the judgment impugned in the revision warranting interference of this Court in exercise of powers under Article 227 of the Constitution of India.

11. Accordingly, this revision fails and it is hereby dismissed. However, the trial Court is directed to dispose

of the suit as expeditiously as possible, preferably, within  
two months from the date of receipt of a copy of this  
order. No order as to costs.

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***JUSTICE B. SESHASAYANA REDDY***

**Date:31.12.2010**

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