

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5635, 5714 and 5597 of 2012

COMMON ORDER :

The revision petitioners in C.R.P.Nos.5635 and 5714 2012 are defendant Nos.1 and 2 respectively in O.S.No.269 of 2010 pending on the file of the Principal Senior Civil Judge, Kurnool and respondent No.1 in the respective petitions is the plaintiff. The sole plaintiff filed the suit for the relief of permanent prohibitory injunction in respect of the plaint schedule property of Ac.2.42 cents in Sy.No.77 (Full) of Mamidalapadu Village of Santapuram Panchayat area of Kurnool Sub-District and also sought for consequential mandatory injunction directing the defendants to remove the construction made in the said schedule property.

2. It is, pending the suit, the plaintiff filed I.A.No.689 of 2010 for temporary injunction; after contest by both the defendants, of whom defendant No.2 is claiming as purchased Ac.0.91 cents, out of the said total extent from defendant No.1 and defendant No.1 claims purchased from one C.H.Ramesh Babu, with reference to Exs.A1 to A32 and Exs.B1 to B12; the lower Court, by order, dated 01.08.2011, granted temporary injunction pending disposal of the suit, restraining the respondents/ defendants 1 and 2 and their men, from interfering or trespassing by making construction in the plaint schedule

property pending disposal of the suit, by making the ad-interim injunction dated 06.07.2010 as absolute. Aggrieved by the same, defendant No.1 filed C.M.A.No.18 of 2011 and defendant No.2 filed C.M.A.No.19 of 2011 and the IV Additional District Judge, Kurnool, by common order dated 25.06.2012, dismissed both the C.M.As confirming the lower Court's temporary injunction order dated 01.08.2011 in I.A.No.689 of 2010 pending disposal of the suit. It is aggrieved thereby, C.R.P.Nos.5635 and 5714 of 2012 maintained by defendant Nos.1 and 2 respectively. Apart from the above, pursuant to the temporary injunction order in I.A.No.689 of 2010 in the pending suit in O.S.No.269 of 2010, the plaintiff sought for police aid and the same was granted by the learned Principal Senior Civil Judge, in I.A.No.743 of 2012 dated 08.10.2012 and impugning the same, C.R.P.No.5597 of 2012 is maintained by defendant No.1 against the plaintiff and defendant No.2 as respondents 1 and 2.

3. As all the three matters are in one suit, outcome of the two C.M.A. orders against the temporary injunction order in I.A.No.689 of 2010 granted in favour of the plaintiff, filed by defendant Nos.1 and 2 and the other for police aid in support of the temporary injunction order granted is under impugnement, all the three revisions are taken up together for common disposal from hearing both sides.

4. The fact that the property originally belonged to one Chakali Somanna is not in dispute by both sides, but for, the

rival claims as vendees from said original owners, wife and three sons after his death viz., Chakali Hanumakka, Pedda Ayyanna, Nadipi Ayyanna and Chinna Ayyanna.

5. So far as the claim of the plaintiff in the suit for bare injunction is that his vendor Chand Miah purchased the plaint schedule property under registered sale deed dated 08.11.1971 from said Hanumakka and three sons of her, after death of Hanumakka's husband, Somanna. It is also the case that the said vendee from the original owners by name Chand Miah originally obtained sale deed for Ac.2.50 cents and on came to know a rectification deed was obtained by confining for Ac.2.42 cents under registered rectification deed-Ex.A2 dated 03.05.1973 and it is pursuant to which, the plaintiff purchased the plaint schedule property from said Chand Miah under original of Ex.A1-registered sale deed dated 27.07.1978 (in trial Court's Appendix of Evidence in Ex.A1 reference mentioned as dated 27.07.2008 also in the appellate Court's common order at para-22 mistakenly as if on that day defendant No.1's vendor C.H.Pamesh Babu purchased, though said purchase by C.H.Pamesh Babu was in 2006 it appears. It is also the claim of the plaintiff before the lower Court in the temporary injunction petition in I.A.No.689 of 2010 that he made an application to the Revenue Divisional Officer, Kurnool, on 03.11.1993 under original of Ex.A3, that was in turn addressed on 28.12.1993 through the Mandal Revenue Officer to Mandal Surveyor under

original Ex.A4 and the Mandal Revenue Officer in turn addressed to the Assistant Director of Survey and land Records under original of Ex.A5 and the Collector issued proceedings dated 15.10.1994 under original of Ex.A6 for the correctness with reference to the revenue records and he obtained Ex.A7 pattadar passbook on 27.06.1998 and the adangals also show the name of him and his vendor under Ex.A9 for the fasalis 1398 to 1403 apart from 10(1) account under Ex.A8 and he cause dug a borewell in 1998 in the property there is an electrical motor and paid electrical charges. One of the receipts is Ex.A14 dated 01.12.2009 for Rs.355/- and there is a telephone connection and also placed reliance on two letters of 2010 and 2011 of the Assistant Accounts Officer, Electricity Revenue Office, APCPDCL, Kurnool-Exs.A24 and 25 for the claim that he is in continuous possession after his vendor since he purchased in 1978. It also shows one K.Subba Rao and two others filed O.S.No.843 of 1998 against the plaintiff herein for permanent injunction on the file of the Principal Junior Civil Judge, Kurnool , and the same is on contest ended in dismissal on 03.09.1999 covered by Ex.A10-copy of the judgment, leave about the certified copies of the depositions of DWs.1 to 4 therein under Exs.A16 and A19 for nothing to show said persons are no more, for living persons depositions are inadmissible, but for, to the limited purpose during trial to confront, if come to witness box as per Section 145 r/ w 155(3) of the Evidence Act, but for, if at all the order in

I.A.No.1931 of 1998 in that suit on 01.04.1999 under Ex.A20. It also shows against said claim of the plaintiff, the contest by defendant No.1 that from the said Chakali Somanna three sons supra, the vendor of defendant No.1 by name C.H.Ramesh Babu purchased the property in 2006 and in 2008 defendant No.1 purchased the entire plaint schedule property from said C.H.Ramesh Babu and while in possession and enjoyment since then he sold under original of Ex.B12 registered sale deed dated 07.02.2009, Ac.0.91 cents to defendant No.2 and it is the case that the suit proceedings in O.S.No.843 of 1998 between Subba Rao and the plaintiff are collusive, for which none of the two defendants herein are the parties and those are not binding, so also any order of temporary injunction in I.A.No.1931 of 1998 in that suit with any status quo order. It is the contest that one Md.Haneef and five others filed O.S.No.8 of 2006 for the relief of declaration of title and permanent injunction on the file of the Principal District Judge against the said C.H.Ramesh Babu and others and the plaintiff is also party defendants to that suit and plaintiff suppressed the factum of said suit and its pendency and pending suit, there is also a memo filed on 16.10.2006 covered by Ex.A13 for Lok Adalat settlement that is not affected and still pending. It is also the submission that neither the plaintiff nor his vendor Chand Miyah have no possession and the so called sale deed and rectification deed are fabricated

documents and plaintiff got no right or title, much less, possession and the suit for bare injunction is not maintainable.

6. The learned Senior Civil Judge with reference to the documents and from the contest in making absolute the ad-interim injunction pending disposal of the suit observed in its order running 55 paras that however Hanumakka and her sons are the owners of the property is not in dispute from both sides and said Hanumakka and her sons sold the property to Chand Miyah on 08.11.1971 and under original of Ex.A1, plaintiff purchased the property from Chand Miyah on 27.07.1978 and rectification deed for the mis-description of Survey No.177 for Survey No.77 obtained under original Ex.A2 dated 03.05.1973 by Chand Miyah before sale to the plaintiff in 1978 and the sale deed of plaintiff shows Ac.2.50 cents but, in the revenue records it is only Ac.2.26 cents and plaintiff applied to the Revenue Divisional Officer to cause measure the total extent of Survey No.77 through Surveyor and Ex.A4 also dated 28.12.1993 in respect of mentions the extent with reference to the revenue record Ac.2.42 cents and Ac.2.50 cents reflected in Ex.A1 and it requires change in the revenue records to give errata and it is obtained. Accordingly, alterations were made by the Mandal Revenue Officer in 1994 for Ac.2.42 cents in Survey No.77 and the plaintiff obtained pattadar passbook under Ex.A7. Accordingly, for Ac.2.42 cents in Survey No.77 and 10(1) adangal under Ex.A8 also shows the same and No.3 adangal from Ex.A9

for fasali 1398 to 1403 shows Chand Miyah and later plaintiff respectively got right over the property in establishing ownership of plaintiff since predecessors. Whereas, the claim of defendant No.1 as purchased on 02.09.2008 from C.H.Ramesh Babu and obtained possession pursuant thereto for Ac.2.26 cents in Survey No.77 and sold later to defendant No.2 on 07.02.2009, Ac.0.91 cents and put him in possession and enjoyment and plaintiff never in possession and plaintiff got no right and defendant No.1 obtained pattadar passbook-Ex.B1 for the said extent besides Ex.B2-title deed and Ex.B5-Resurvey and Resettlement Register also shows the same besides Ex.B6-electricity bill of the service connection in the property which was dated 13.07.2010 apart from defendant No.2 also obtained pattadar passbook and revenue title deed under Exs.B10 and B11 as vendee under Ex.B12 from defendant No.1. Ex.A25-reply of Assistant Accounts Officer, Electricity Revenue Office, APCPDCL, Kurnool, shows plaintiff obtained electricity service connection in 2002 bearing No.78544 and in March, 2007 it was disconnected for non-payment of the bills and the final bill under Ex.A14 dated 01.12.2009; whereas defendant No.1 claimed obtained electricity service connection No.11573 is by showing payment of Ex.B6-bill dated 13.07.2010 and it shows for the self same connection and not for a different connection obtained by defendant No.1 in payment of the said bill in 2010. Having regard to the above any subsequent sale by the original

owners after sale of the plaintiff's vendor and in turn to the plaintiff, to the defendant vendor's C.H.Pamesh Babu will not give any right thereby the plaintiff got *prima facie* case and balance of convenience and will suffer irreparable injury unless the temporary injunction sought for is granted.

7. As referred supra, impugning the said ad-interim injunction made absolute by the order of the trial Court in I.A.No.689 of 2010 defendant Nos.1 and 2 respectively filed C.M.A.Nos 18 and 19 of 2011 and the lower appellate Court confirmed the same by dismissal of the two appeals by common order dated 25.06.2012 with observations particularly from para-13 till para-29 that by reiterating and referring to the above.

8. Now, coming to the grounds urged in the revisions, the concurrent findings in the injunction application and the C.M.As. against it, it is averred that the Courts below did not take into account of the original sale deed of purchase from Hanumakka and sons on 08.11.1971 in favour of Chand Miyah not filed by plaintiff, but for, so called rectification deed dated 03.05.1973 and so called sale deed of 1978 from Chand Miyah by the plaintiff under Ex.A1 and Ex.A2 and the orders are outcome of non-application of mind and the Courts below should have seen that defendants are in possession and not the plaintiff, which is criteria for grant or refusal and there is a cloud of title and suit for bare injunction is not maintainable and the Courts below did not properly advert to it.

9. Learned counsel appearing for the revision petitioner reiterated the same in the course of hearing.

10. Whereas, it is the submission of the learned counsel for the plaintiff in opposing the two revisions that the concurrent findings of the Courts below no way require interfere by this Court while sitting in revisions within the limited scope.

11. Heard both sides at length on the three matters and perused the respective grounds of revisions as order granting police aid from the affidavit petition, which is subject matter of revision in C.R.P.No.5597 of 2012 and also the grounds urged in C.R.P.Nos.5635 and 5714 of 2012 against the orders in C.M.A.Nos.18 and 19 of 2011 and perused the entire material on record.

12. Coming to C.R.P.No.52597 of 2012 which is filed aggrieved by the order of granting police aid, in the factual scenario, maintaining the very granting of injunction is unsustainable and granting of police aid is not tenable and the order is liable to be set aside and the same is erroneous and ill-appreciation of the facts.

13. Learned counsel for the revision petitioner reiterated the same. Whereas, the learned counsel for respondent/plaintiff supported the order.

14. From the above common hearing with reference to the above facts, the documents exhibited before the lower Court

and the findings supra, in deciding the three revisions, the law is fairly settled including from the expression of this Court, reiterating the earlier expression of this Court in Sama Janareddy @ Jani v. Muppa Narasimhareddy (C.R.P.No.4737 of 2016 dated 30.12.2016) that once there is an order of injunction, it is the duty of the Court to implement the same by granting police aid and it can be granted even against ad-interim injunction or temporary injunction pending disposal of the suit.

15. Coming to the granting of the very injunction by the lower Court confirmed by the lower appellate Court in dismissing the two appeals of defendant Nos. 1 and 2 concerned, once even the original sale deed of 1971 in favour of Chand Miyah by Hanumakka and her sons not filed, even ignoring the rectification of Ac.1.73 cents for mis-description of Survey No.177 or 77 or the extent Ac.2.50 cents for Ac.2.42 cents, the sale deed in favour of the plaintiff executed by Chand Miyah is of the year 1978 which is covered by original of Ex.A1 apart from rectification deed of 1973 is original of Ex.A2 and there is correction in the revenue record with reference to the rectification deed from the application of errata in giving pattadar passbook in favour of the plaintiff and revenue adangal and 10(1) account also reflects. Once such is the case, the vendor of defendant No.1 claims purchased in 2006 or 2008 as the case may be, in turn of defendant No.1 from said C.H.Pamesh Babu in 2008 and by defendant No.2 for part of

which from defendant No.1 in 2009 based on the principle, that too, when claimed for the same property of Survey No.77 full extent no way can convey a better title than what he has is the basic principle and further, once there are concurrent findings of the Courts below, nothing shown that any perversity or unsustainability, merely because another view also possible apart from appellate Court cannot even sit against, for this Court while sitting in revisions there is nothing to interfere, but for, to say none of the observations of the concurrent findings of the Courts below any way influence the mind of the lower Court in deciding the suit, which is of 2010 pending for past seven years to give early disposal, where the defendant can urge regarding the so called possession of them and how they got any better title also over the property to that of the plaintiff from the source of title of the original owners not in dispute.

16. With the above observations, all the three revisions are dismissed.

17. Consequently, miscellaneous petitions, if any, pending shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date: 30-11-2017
pab