



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3311]

THURSDAY ,THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CIVIL REVISION PETITION NO: 578/2024

Between:

The District Co-operative Marketing Society(dcms)

...PETITIONER

AND

Varam Soujanya

...RESPONDENT

Counsel for the Petitioner:

1.CHALLA GUNARANJAN

Counsel for the Respondent:

1.A SYAM SUNDAR REDDY

The Court made the following Order:

This civil revision petition is filed under Article 227 of the Constitution of India against the order dated 05.01.2024, allowing the petition in CMA.No.06 of 2023 on the file of Court of VI Additional District Judge, Kadapa filed against the Order dated 04.04.2023, dismissing the petition in I.A.No.878 of 2022 in O.S.No.908 of 2022 on the file of Court of the III Additional Junior Civil Judge, Kadapa filed under Order XXXIX Rules 1 and 2 of CPC by the plaintiff seeking interim injunction restraining the defendant and its men/agents from

interfering with the peaceful possession and enjoyment of the following suit Schedule property:

Kadapa District, Kadapa Rural Sub-District, Kadapa Municipal Corporation Area, Chemmumiahpet area, Chemmumiahpet, D.No.45/102-1 of R.C.C. Slab Medde House, Vacant Site fall in S.No.573-1/B to an extent of Ac.0.02 cents 09 square links or 0.008 hectares, R.C.C.slab house, vacant site, etc bounded by:

“East: Houses of V.Subbanna, V.Venkatesulu

West: Rastha,

North: Rastha,

South: House of V.Sreenivasulu

Within these boundaries running, East-West: 19 feet or 5.79 meters, North-South: 48 feet or 14.64 meters, land to an extent of Ac.0.02 cents 9 square links or 101.33 square yards, the measurements of the ground floor medde R.C.C. slab house, East-West: 19 feet or 5.79 meters, North-South: 46.5 feet or 14.18 meters, an extent of 883.5 square yards of R.C.C. Slab Medde House, the measurements of first floor is East-West: 19 feet or 5.79 meters, North-South: 46.5 feet or 14.18 meters, an extent of 883.5 square feet of R.C.C. Slab house, the measurements of Second floor is East-West: 19 feet or 5.79 meters, North-South: 15 feet or 4.57 meters, an extent of Ac.285.5 square feet of R.C.C. slab, house in Second floor, with all right in one foot site, vacant site, roofs with its attachments, doors, windows, with all constructions, etc., electric fittings. H.S.C.No.2112701063053 meter, etc.”

2. The plaintiff filed the suit for permanent injunction restraining defendant, its men/agents etc., from interfering with the peaceful possession and enjoyment of the plaintiff in respect of the plaint schedule property. The case of the plaintiff is briefly as follows:-

The plaintiff is the absolute owner of the suit schedule property having acquired the same by her under a registered gift deed bearing document No.4200 of 2022 dated 11.05.2024 from her husband followed by the delivery of possession. Her husband acquired the said

property from his ancestors, who had been in enjoyment of the same for more than 50 years. The house constructed by her husband is being renovated by her, but the defendant and its men are obstructing the activities of construction though the defendant has no title or possession. On 05.09.2022, the defendant, with its hired men, tried to interfere with the activities of the plaintiff, however the plaintiff could prevent them with the aid of the neighbours and thereby, the defendant and the men left the place saying that they would come again with sufficient men and material, including the police, to dispossess the plaintiff from the suit schedule property.

3. With such averments, the interlocutory application in I.A.No.878 of 2022 was filed. The petition was opposed by filing counter of the respondent/defendant denying the averments made in the petition and further stating briefly as follows:

The respondent got its site in the year 1965, from one Rama Krishna Reddy and ever since then, it has been in possession of the same without any hindrance from anyone, much less the petitioner or her husband. The petitioner started making constructions by encroaching into the site of the respondent on northern side of the petitioner's property. The respondent questioned the petitioner and her husband. The husband of the petitioner came to the office of the respondent and thereby the respondent advised the petitioner's

husband on 01.07.2022 to get their land surveyed by a competent surveyor. Having agreed the same, the petitioner or her husband did not get the land surveyed, but started making constructions again on 01.08.2022. Thus, the respondent asked the petitioner and her husband to stop the constructions. They refused to do so. Therefore, the respondent gave a notice to the husband of the plaintiff on 25.08.2022 stating that the respondent has a land of ac.2.21 cents in survey No.563/1 purchased on 11.09.1965 and it is situated on the northern side of the plaintiff's site and further that the plaintiff has to get the land surveyed, however, the plaintiff put a deaf ear and started constructions, due to which a complaint was given to the Circle Inspector of Police, who called both the parties and asked them to get their lands surveyed by competent surveyor. Though the husband of the plaintiff agreed to get the land surveyed, it was not done till now, whereas the defendant got the land surveyed through a surveyor appointed by the Municipal Commissioner on the letter given by the defendant and a report of the survey showed that the plaintiff and others occupied land to an extent of ac.0.16 cents belonging to the respondent. The site encroached by the petitioner is shown as CDEF in the plan. The measurements are CD-19.5 feet, CE-5 feet, EF-19 feet, FD-10 feet. The plaintiff has no right over the encroached portion of the defendant based on her documents dated 12.05.2022. There is

no prima facie case, balance of consideration in favour of plaintiff in view of the above facts and circumstances.

4. On behalf of the petitioner following Exhibits were marked:-

Ex.P1 is original registered settlement deed dated 11.05.2022 vide document No.4200 of 2022.

Ex.P2 is Photos along with C.D.

5. On behalf of the respondent following Exhibits were marked:-

Ex.R1 is sketch issued by Mandal Surveyor, dated 14.11.2022.

Ex.R2 is rough plan.

Ex.R3 is photos along with C.D.

Ex.R4 is tax receipt.

Ex.R5 is sale deed, dated 11.09.1965 in document no.3578/1965.

Ex.R6 is sale deed, dated 24.05.1967 in document no.1866/1967.

Ex.R7 is office note of the Joint Collector.

Ex.R8 is letter addressed to Tahsildar, Kadapa, dated 05.12.2019.

Ex.R9 is letter addressed to Tahsildar, Kadapa, dated 08.09.2022.

No oral evidence was allowed.

6. After hearing both the parties, the trial Court dismissed the petition observing that the survey report under Ex.R1/the sketch issued by the Mandal Surveyor, Kadapa clearly goes to show that there is a specific encroachment to an extent of Ac.0.16 cents by the plaintiff and others into the property of respondent society and that there is no substantial evidence in support of the *prima facie* case, balance of convenience and irreparable loss in favour of the petitioner to obtain relief of temporary injunction and on the other hand the documents filed by the respondent would support its case.

7. Aggrieved by the order, the petitioner/plaintiff filed CMA.No.6 of 2023. The appeal was allowed observing that the respondent Society admitted about the possession of the property by the petitioner as per Ex.B1, therefore, the petitioner established the *prima facie* case and balance of convenience in favour of the petitioner and that if the temporary injunction is not granted, she would be put to irreparable loss. Hence, the appellate Court found that the petitioner/appellant is entitled to temporary injunction. Accordingly, the appeal was allowed.

8. Aggrieved by the same, this revision petition was filed.

9. Sri N.Sai Phanindra Kumar, learned counsel representing the learned counsel for the revision petitioner submitted that the appellate Court has erroneously allowed the petition reversing the finding of the trial Court without observing that there is no *prima facie* case, balance of convenience or irreparable loss established by the petitioner's land on ample evidence placed by the respondent/defendant in the form of the survey report. He further submitted that the husband of the petitioner had no title to the property and therefore, he may not convey his wife a better title than what he did not have. In this regard, he has drawn the attention of this Court to the contents of the gift deed marked as Exhibit P1. He has further shown the sketch of the Municipal Surveyor marked as Exhibit R1 and the revised plan as Exhibit R1 and the photographs. Therefore, he vehemently contended

that the petitioner or her husband does not have title, and that merely basing on the document under Exhibit P1, no prima facie case can be made out showing valid title in her favour. He further submitted that the defendant did not admit the legal possession of the petitioner over the disputed property, but merely stated that the petitioner encroached into the property of the respondent and therefore, the appellant Court erred in its observation that the respondent/defendant admitted possession of the petitioner. It is also submitted by him that except the one observation of the appellate Court that the respondent admitted the possession of the petitioner, there is no other finding of the appellate Court to say that the petitioner established her *prima facie* case, balance of convenience or irreparable loss and to refer the finding of the trial Court contrary to the same. He further submitted that the appellate Court failed to consider the report of the surveyor, nor did it refer it or answer it and therefore, the order of the appellate Court is extraneous to the evidence on record, whereas, the trial Court passed the order considering the evidence placed by both parties.

10. On the other hand, the learned counsel for the respondent supported observations of the appellate Court. He further submitted that unless interim injunction is granted, in spite of the possession of the property by the petitioner, the building would be demolished by the defendant and that it is only during the course of trial, the

contentions of the defendant can be examined and therefore, if the property is allowed to be demolished before the trial, the purpose of filing the suit would be defeated. He further submitted that the petitioner has specifically given door number, which goes to show the existence of the property and moreover the property of the petitioner and the property of the defendant are situated in different survey numbers and therefore, there would be no prejudice caused to the defendant even if interim injunction is granted. It is also submitted by him that the question whether there is encroachment would be decided during the course of trial and meanwhile, it is necessary to grant interim injunction or else the interest of the petitioner would be jeopardised. Therefore, he requested to dismiss the revision petition.

11. It is settled and that the relief of interim injunction is an equitable relief for the grant of which the petitioner must be able to establish prima facie case, balance of convenience and irreparable loss. It is further settled general principle of law that no injunction can be granted against true owner, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to dispossess him except according to procedure of law.

12. *Prima facie* case is said to be existing when there is a triable issue, balance of convenience will be shown if the petitioner is able to

establish that unless injunction is granted, the petitioner will suffer loss than the loss that the respondent may suffer in the event of granting interim injunction. If the loss likely to be suffered by not granting injunction cannot be compensated in terms of money it is treated as irreparable loss. First of all the petitioner must be able to establish prima facie case and must also approach the Court with clean hands to acquire the equitable relief of injunction.

13. It is apt to refer to the decision of the Jammu & Kashmir High Court in, **Mohammad Hashim Banday and Ors. vs. Ghulam Mohi ud din Banday and Ors**¹ dated 19.04.2019, at paras 13 held as follows:

“13. The phrases 'prima facie case', 'balance of convenience', and 'irreparable loss', are words of width and elasticity to meet myriad situations presented by man's ingenuity in given facts and circumstances but they must always be hedged with a sound exercise of judicial discretion to meet the ends of justice. A prima facie case implies the probability of the plaintiff obtaining a relief on the material placed before the court. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case. For establishing a prima facie case, it is not necessary for the party to prove his case to the hilt and if a fair question is raised for determination, it should be taken that a prima facie case is established. The plaintiff must also establish the balance of convenience in the event of withholding the relief of temporary injunction will, in all events exceed that of the defendant in case he is restrained. The plaintiff must also show a clear necessity for affording protection to his alleged right which would otherwise be seriously injured or impaired. The principle of balance of convenience implies the evenly balancing of scales. The term 'irreparable injury' means injury which is substantial and could never be adequately

¹ MANU/JK/0317/2019

remedied or atoned for by damages, injury which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exist any standard for ascertaining the actual damage likely to be caused. It is most apposite to mention here that irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, that cannot be adequately remedied or compensated by way of damages. [Vide: Subodli Gopal Bose v. Province of Bihar MANU/BH/0055/1950 : AIR 1950 Pat 222; Raju Maheshwar Dayal Sseth v. Yuvraj Dutta Singh MANU/OU/0143/1945 : AIR 1946 Oudh 42; Doherty v. Allman (1878) 3 App Cas 709; Subba v. Haji Badsha MANU/TN/0063/1902 : (1903) ILR 26 Mad 168, 175; Firm Ram Kishun Shah Itwari Sahu v. Jamuna Prasad MANU/BH/0221/1950 : AIR 1951 Pat 469; Israil v. Shamsar MANU/WB/0046/1913 : (1914) ILR 41 Cat 436, 442-43, 21IC 861; Nanabhai v. Janardhan (1888) ILR 12 Boim 110; Hemanta v. Baranagore MANU/WB/0535/1914 : (1914) 19 CWN 442, 24 IC 313; Civil Station Sub-Committee, Nagpur v. Govindrao MANU/NA/0007/1937 : 1937 ILR Nag 33, 170 (C 239, AIR 1937 Nag 137; LD Meston Society v. Kashi Nath Misra MANU/UP/0389/1950 : AIR 1951 All 558; Sitaram Banwari Lal MANU/WB/0021/1972 : AIR 1972 Cal 105].

17. ... While considering grant of interim injunction to mitigate risk of injustice, the Court has also to weigh the corresponding need of defendant to be protected, against injury resulting from his having been prevented from exercising his own legal rights, for which he could not be adequately compensated. The balance of convenience has to be evaluated on said touchstone...

21. Under Order XXXIX, CPC, the Court, exercising an equitable jurisdiction, cannot overlook conduct of the party as held by the Supreme Court in the case of M/s. Gujarat Bottling Co. Ltd. and others v. Coca Cola Company and others, MANU/SC/0472/1995 : AIR 1995 SC 2372. The Supreme Court held that under Order XXXIX, CPC, the jurisdiction of the Court to interfere with an order of interlocutory or temporary is purely equitable and, therefore, the Court on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or

inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person, seeking an order of injunction under Order XXXIX Rule 1 or Rule 2 of the Code, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

In the present case, learned Trial Court as well as Appellate Court, after going through respective pleadings of the parties, have rightly passed impugned orders”.

14. It is settled law that out of three principles, *prima facie* case is *sine quo non* and an other one principle is sufficient and not all three are not required to grant the relief of injunction. The Jammu & Kashmir High Court in the above cited case held at para 23 as follows:

“23. It is the settled law that when a party lacks existence of a *prima facie* case, the other two requirements such as balance of convenience and irreparable loss lose their significance. However, if a *prima facie* case exists, which is, otherwise, *sine quo non* for grant of interim injunction, it would be sufficient to exercise jurisdiction if one of the other two factors, viz. balance of convenience and irreparable loss, also exists. The judicial discretion cannot be guided by expediency. The Courts are not free from statutory fetters. The justice is to be rendered in accordance with law. The judges are not entitled to exercise the discretion wearing the robes of judicial discretion and pass the orders based solely on their personal penchants and unusual dispositions. The judicial discretion, wherever it is required to be exercised, has to be in accordance with the law and set legal principles. This is the dictum of the Supreme Court in M.I.

Builders Pvt. Ltd. v. Radhey Shyam Sahu MANU/SC/0999/1999 : (1999) 6 SCC 464”.

15. Since temporary injunction is discretionary relief and once the trial Court grants or refuses order exercising discretion, the same will not be normally interfered, unless it is found that such discretion was exercised arbitrarily, capriciously or perversely or where Court ignored settled principles of law as held by the Supreme Court in **Ramdev Food Products (P) Ltd vs. Arvind Bhai Patel & ors**².

16. The basis for claiming title and possession by the plaintiff is Exhibit P1. The case of the plaintiff is that her husband got the property from his ancestors who were in enjoyment of the same for about 50 years. A perusal of Exhibit P1 shows that there is no reference to the source of title of the husband of the petitioner. He merely stated that he is owner of the property and conveying his property to his wife in consideration of love and affection to her. Thus, the exhibit P1 itself does not state that her husband has acquired the property from his ancestors as pleaded in the plaint. Apart from Exhibit P1, there is no other document filed to show that her husband or his ancestors ever had any title or possession over the said property. Therefore, her claim to the property for establishing title in herself by virtue of Exhibit P1, the transferor must first of all have title to the property, in the absence of which the claim of the petitioner to

² (2006) 8 SCC 726

the title could not stand. The only other document filed by the petitioner are photographs which cannot establish her title. On the other hand, as against the evidence placed by the petitioner, the respondent filed the title deed under Exhibit R5 and also sketch given by the Mandal Surveyor dated 14.11.2022, marked as Exhibit R1 in support of its contention that a part of the property claimed by the petitioner is an encroachment into the property of the respondent's land, details of the encroachment of land also were enclosed. The admission by the respondent that the petitioner encroached into the property of the respondent cannot be treated as an admission of possession by the petitioner. The petitioner must be able to establish legally sustainable possession and not mere possession. As against the evidence placed by the respondent, if the case pleaded and the evidence placed by the petitioner are considered, it cannot be stated that the petitioner could establish *prima facie* case. When the petitioner could not establish *prima facie* case merely on the ground of balance of convenience, equitable relief of interim injunction cannot be granted, leaving it to the fate of the respondent to fight throughout the trial. It is a case, where there is a glaring failure of the petitioner to establish the basic element of title coupled with possession, in contrast to the valid title shown by the respondent. An encroacher cannot seek an equitable relief of injunction so as to prevent the real owner from protecting the property. The trial Court has rightly

appreciated the evidence, whereas the appellate Court, without appreciating the evidence placed by both the parties and also examining the finding of the trial Court, allowed the appeal on the simple reasoning that the respondent admitted the possession of the property by the petitioner. Therefore, the order of the appellate Court is against the principles of law to grant interim injunction. Thus, the order of the appellate Court impugned in this revision requires interference.

17. In the result, the revision petition is allowed by setting aside the order passed by the appellate Court in order dated 05.01.2024, allowing the petition in CMA.No.06 of 2023 and simultaneously restoring the order dated 04.04.2023, passed by the trial Court in I.A.No.878 of 2022 in O.S.No.908 of 2022.

There shall be no order as to costs.

Pending interlocutory applications, if any, shall stand closed.

Pending miscellaneous applications, if any, shall stand vacated.

JUSTICE B.S.BHANUMATHI

Date: 28.03.2024

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THE HON'BLE MS JUSTICE B.S.BHANUMATHI

C.R.P.No.578 of 2024

Dt.28.03.2024

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