

IN THE COURT OF THE SENIOR CIVIL JUDGE; PUTTUR.

Present: Sri C. Muralidhar,
Senior Civil Judge, Puttur.

Thursday, the First (1st) day of August, 2019.

C.M.A .No.1 of 2019

Between:

P. Muniraja Achari.

.. Appellant

And:

1. P. Thandava Achari,

2. P. Dilli Babu,

3. P. Revathi.

.. Respondents

Civil Miscellaneous Appeal against the Order and decreetal order of the
Principal Junior Civil Judge, Puttur dt.20.11.2018 made in

I.A.No.587 / 2018 in

O.S.No.117 / 2018

Between:

P. Muniraja Achari.

.. Petitioner/Plaintiff

And:

1. P. Thandava Achari,

2. P. Dilli Babu,

3. P. Revathi.

.. Respondents/Defendants

This CMA is coming on this day before me for final hearing in the presence of Sri V.M. Narendra Kumar and G. Gurunath, Advocates for appellant and of Sri G. Raja Reddy, Advocate for respondents, and upon perusing the grounds of appeal and the material part of records connected there with, and upon hearing the arguments on either side and having stood over for consideration till this day, this court made the following:-

ORDER

This CMA is preferred by the Appellant aggrieved by the orders of Principal Junior Civil Judge's Court, Puttur dt.20.11.2018 in dismissing the IA.No.587 of 2018 in OS.No.117/2018 filed for temporary injunction.

2. The brief facts of the petition in IA.No.587 of 2018 in OS.No.117/2018 are that petition schedule property is a Grama kantam and the mother of petitioner P.Vanajakshi constructed a thatched house in it. In recognizing of her possession the Tahsildhar, Karvetinagaram issued a possession certificate in her favour in Sy.No.57/3 an extent of Ac.0.03 cents. The said Vanajakshi had 2 sons ie., plaintiff and 2nd defendant. Plaintiff, his mother and defendants 1 and 2 are partitioned orally about 18 years back. After partition petitioner constructed asbestos sheet house and also shop in petition schedule property. The respondents 1 and 2 constructed RCC building on the north of it. After partition the petitioner and his mother are residing in the petition schedule property running a 'Viswa Karama Industrial Unit No.1' at Krishnapuram village. Petitioner is looking after his mother P. Vanajakshi and they are living in the petition schedule property separately. 1st respondent and his son 2nd defendant are residing on the north of petition schedule property along with 3rd respondent separately, the 3rd respondent is the wife of 2nd respondent. After oral partition the petitioner and respondents living separately and they are enjoying their respective shares. Petitioner having sister namely Thulasi and he performed her marriage and spend amount for her. Petitioner obtained approval plan for the petition schedule property and also license for running the said unit and there are wood painting machine, drilling machine, caring machine and wood materials etc and obtained electricity service No.5343327000176 and paying consumption charges and also paid house tax to the petition schedule property. In recognizing the possession of the petitioner the VRO also issued a certificate and the sarpanch issued possession certificate in the name of petitioner. There are misunderstandings between the petitioner and respondent for which they are trying to interfere with the possession of the petitioner. While so on 2.6.2018 the respondents tried to trespass into the petition

schedule property and also tried to interfere with the petition schedule property and tried to damage the petition schedule property, and the acts of the respondents was thwarted by the petitioner with the help of neighbouring people and they went away proclaiming to revenue their attempts, hence, petitioner filed the suit and the present petition for want of temporary injunction.

3. The respondent No.2 filed counter which was adopted by respondents 1 and 3 by denying the allegations in the petition and further contended that no partition took place between the petitioner and respondents and their family members and till today petitioner and respondents are in joint possession and enjoyment of the petition schedule property. Petitioner suppressed the said fact and filed the suit and petition. Petitioner issued legal notice dt.,28.4.2018 to the respondents for which the respondents gave reply on 1.5.2018 and immediately after receipt of reply notice the petitioner and his mother colluded together created registered settlement deed dt.11.5.2018 and the same is not binding on the respondents and the mother of petitioner not added as party it is by non joinder of necessary parties. Petitioner and respondents are jointly running the factory and with the income derived from carpentry work all the parties to the suit and their family members are residing jointly. Petitioner is only a co-sharer over the petition schedule property and other joint family properties. The property covered under possession certificate stands in the name of other of 2nd respondent and property covered under alleged registered settlement deed are different. Petitioner has no absolute right over the petition schedule property, and hence, petition is liable to be dismissed.

4. Ex.A1 to Ex.A14 were marked on behalf of the petitioner and Ex.R1 to R3 were marked were marked on behalf of the respondents.

5. After due enquiry, the trial court dismissed the petition holding that document under Ex.R1 shows that both parties are in joint possession of the petition schedule property, and petitioner failed to prove prima facie case and balance of convenience in its favour and also petitioner suppressed the material facts, and thus, dismissed the petition.

6. Aggrieved by the said orders, the present CMA has been preferred by the Appellant i.e., (petitioner / Plaintiff).

7. The brief averments of grounds of appeal which is nothing but replica of petition averments in IA.No.587 of 2018 and not mentioned herein, and further contended that appellant filed documents Ex.P1 to Ex.P14 and the lower court not observed the documents of Ex.P1 to Ex.P14 and simply petition was dismissed, the trial court not observed Ex.P1 to Ex.P14 each and every documents and there is no explanation about the order of the trial court with regard to documents filed by appellant, the trial court not observed the documents filed by the respondent Ex.R1 to Ex.R3 and the said documents already filed by the appellant in the above case and the trial court not verified the documents of Ex.P1 to Ex.P14 and simply dismiss the petition, the trial court came to conclusion that the disputes cannot be decided interlocutory application unless and until full fledged trial in suit commenced true facts will not come before this court to decide the matter conclusively are not correct. After dismissal of IA.No.587 of 2018 in Os.No.117/2018 dt.20.11.2018, on 21.12.2018 the respondents tried to trespass and also damaged the asbestos sheet and wall in the appeal schedule property at that time the wife of appellant objected not to damage the same but the respondents beat her and for which she gave a complaint to SHO Karvetinagaram police on 22.12.2018 and the same was registered as case in

Cr.No.65/2018, and hence, injunction has to be granted in favour of appellant, and prays to allow the appeal.

8. Both parties are arrayed as the same as referred in the trial court.

9. Heard both sides.

10. Point for consideration is whether the appeal can be allowed and whether the appellant are entitled for allowing the temporary injunction in IA.No.587/2018 in OS.No.117/2018 as prayed for ?

11. Point:- Perused the record as well as order of the trial court and also the marked exhibits.

12. As seen from the record, Petitioner filed the suit for permanent injunction. It is main contention of the petitioner that he is in exclusive possession and enjoyment of the petition schedule property as that property acquired by him in the family partition took place between the family members. He also contended that 2nd respondent got the property in the family partition which is situated on the northern side of petition schedule property and that both are separately enjoying their respective share of property. At the same time, the respondents reported that there was no family partition between the family members of petitioner and respondents and the even till today they are enjoying their joint family property as joint family members. Plaintiff did not produce any record to show that family properties already partitioner and he got his share ie., petition schedule property and further not filed any document to show that he is in exclusive possession of the petition schedule property. Respondents further contended that they denied the possession of the petitioner and still the joint family is in existence and no separation taken place in the joint family.

13. This court observed that whether family partition taken place or not; and the members of family are separate or not and after separation the joint family members are enjoying their respective shares and they are in exclusive possession are not, all these facts to be decided during the course of trial, at this stage, the court cannot come to any conclusion that petitioner is in exclusive possession and enjoyment of the petition schedule property, and the trial court rightly vacated the injunction already granted in favour of petitioner considering all the said facts. Further this court observed that genuineness of documents filed by both parties to be examined with the help of oral evidence during the course of trial and thereafter the court can come to right decision of the case ie., whether the petitioner is in exclusive possession and enjoyment of the petition schedule property. To decide the above facts it requires full fledged trial. So far no trial is commenced and it is not the right stage to grant any order in favour of plaintiff. In the above said circumstances, this court felt that basing on the contentions of petitioner there is no need or necessity to grant injunction in favour of petitioner as there is no prima facie case and balance of convenience in favour of petitioner. Therefore, the findings of the trial court need not be interfered. Accordingly, this point is answered confirming the order of the trial court.

14. In the result, the Civil Miscellaneous Appeal is dismissed without costs.

Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in Open court, this the 1st day of August, 2019.

SENIOR CIVIL JUDGE,
PUTTUR.

Appendix of evidence
-Nil-

SCJ,
PTR.

Fair Order