

**IN THE COURT OF II ADDL. DISTRICT AND SESSIONS JUDGE (FTC)
MANCHERIAL**

PRESENT: SRI P. NARAYANA BABU
III ADDL. DISTRICT. AND SESSIONS JUDGE (FTC),
ASIFABAD
FAC: II ADDL. DISTRICT. AND SESSIONS JUDGE (FTC),
MANCHERIAL

TUESDAY THIS THE 31st DAY OF DECEMBER, 2019

C.M.A. NO. 1 OF 2019

Between:

Penta Mallaiah, S/o Rajaiah, Age: 50 years,
Occ: Business, R/o Mancherial.

...Appellant

// And //

Bityala Ravinder, S/o GAttaiah, Age: 52 years,
Occ: SCC Employee, R/o H.No.5-38/1, Q.No.C2-33,
Krishna Colony, Srirampur, Mancherial.

...Respondent

On appeal from the court of Prl. Junior Civil Judge at Mancherial

I.A.No. 824 of 2018

IN

O.S.No. 259 of 2018

Between:

Penta Mallaiah, S/o Rajaiah, Age: 50 years,
Occ: Business, R/o Mancherial.

...Petitioner/Plaintiff

// And //

Bityala Ravinder, S/o GAttaiah, Age: 52 years,
Occ: SCC Employee, r/o H.No.5-38/1, Q.No.C2-33,
Krishna Colony, Srirampur, Mancherial.

...Respondent/Defendant

This civil miscellaneous appeal is coming before me on 21-11-2019 in the presence of Sri E. Rajeshwar Rao, counsel for Appellant and Sri M. Ravinder Rao, counsel for respondent, having heard and considering the material on record, this court passed the following order:-

:: ORDER ::

This Civil Miscellaneous Appeal is filed by the unsuccessful appellant/plaintiff against the order and decree dated 23-01-2019, passed in I.A. No.824/2018 in O.S.No.259/2018 on the file of Prl. Junior Civil Judge, Mancherial.

2. The petitioner filed the main suit, seeking perpetual injunction in respect of the petition schedule land to the extent of 293.33 Sq.yards in Sy.No.37, plot No.24, situated at Naspur village of Naspur mandal of Mancherial district. In the said suit, the petitioner also filed an interlocutory application vide I.A.No.824/2018 seeking temporary injunction against the respondent, restraining the respondent from interfering into his peaceful possession and enjoyment over the petition schedule land.

3. The claim of petitioner in the said suit was that, he is the absolute owner and possessor of the petition schedule land and that he purchased the same from one Duggirala Vijaya Dattu through a registered sale deed, dated 02-07-2018. The name of Vijaya Dattu is implemented in revenue records. The vendor of the petitioner purchased the petition land from One Laxminarayana Sharma and Mujahid Pasha through a registered sale deed in the year 2003. That the respondent is a stranger to the suit schedule property, having no right whatsoever over the schedule property, he has been interfering with his peaceful possession over the suit schedule land, that on 05-10-2018 the respondent along with some other persons criminally trespassed into the petition schedule property and started digging the trenches, that immediately petitioner rushed to the petition schedule property and resisted the illegal acts of the respondent with the help of neighbours and well wishers, that while leaving the petition schedule property, the respondent openly threatened the petitioner that he would dispossess the petitioner from the petition schedule property and occupy the same at any cost. That the petitioner is not in a position to protect his

possession over the petition schedule property unless the respondent was restrained by way of injunction. As such, he sought for temporary injunction.

4. The respondent filed his counter in the said I.A. denying the averments of the petition and contended that one Laxminarayana was the pattedar of the land to an extent of Ac.4.12 guntas in sy.No.37 of Naspur shivar, that he got divided the said land into plots, that one Kurshidunnisa Begum purchased plot No.24 to an extent of 293 Sq. yards from Laxminarayana Renwa through registered sale deed for a valid consideration within the boundaries, towards East: 24 feet road, towards West: plot No.36, towards North: Plot No.25 and towards South: Plot No.23, that after the said purchase, Kurshidunnisa Begum sold the said plot to Abdul Azeez through registered sale deed and the purchaser got mutated his name in the revenue records and also obtained house construction permission from Gram Panchayat, Naspur by paying requisite tax of Rs.1,860/-, that he also got approval for his house plan, thereafter the said Abudl Azeez sold the said plot to Md.Fasiuddin through registered sale deed for a valid consideration and he also got mutated his name in the revenue records, that thereafter the respondent purchased the said plot from Fasiuddin through registered sale deed vide document No.11448/2017, dated 13-12-2017 for a valid consideration and he obtained house construction permission vide No.37/GPN/2018, dated 09-02-2018 from Gram Panchayat, Naspur by paying requisite fee and also obtained electric connection from Northern Power Distribution Corporation Limited (NPDCL) by taking no objection certificate vide Rc.No.13/GPN/2018, dated 19-02-2018 from Gram Panchayat, Naspur, that after obtaining permission, the respondent constructed compound wall around his plot and also the construction work is in progress, to prove the same the respondent filed photographs of construction made by him over the petition schedule property, as such the petitioner's allegation that he is in possession of the petition schedule property does not arise. The

respondent further submits that Laxmi Narayana Sharma and Mujahid Pasha were never in possession of the petition schedule property nor they have got any title over the petition schedule property, as such the claim of the petitioner is baseless and therefore prayed for dismissal of the petition.

5. During the course of enquiry before the Prl. Junior Civil Judge, Mancherial though no oral evidence was adduced, but ExP.1 to P.8 were exhibited on behalf of the petitioner, whereas ExR.1 to R.27 were exhibited on behalf of the respondent. Considering the material available on record, the learned Prl. Junior Civil Judge, Mancherial dismissed the said petition.

6. Aggrieved by the said order and decree and challenging the same, the petitioner preferred the present Civil Miscellaneous Appeal.

7. Heard arguments and perused the entire material available on record.

8. Now the points that arose for consideration are :-

1. Whether the lower court failed to appreciate the contents of petition affidavit and documentary evidence in the right prospects?

2. Whether the impugned order in IA No.824/2018 in OS 259/2018 on the file Prl. Junior Civil Judge, Mancherial, dated 23-01-2019 is sustainable?

3. Whether the petitioner is entitled for temporary injunction restraining the respondent from interfering with the possession and enjoyment of the petition schedule property i.e. land in Sy.No.37, plot No.24 to an extent of 293.33 Sq. yards situated at Naspur village and revenue mandal of Naspur of Mancherial district.

4. To what relief?

POINT NO.1:-

9. On perusal of entire record available before this appellate court the IA No.824/2018 in OS No.259/2018 filed by the appellant herein/petitioner in IA before the Prl.Junior Civil Judge's Court, Mancherial for seeking temporary injunction to restrain the respondent from interfering with the possession and

enjoyment of the petition schedule property i.e. land in Sy.No.37, plot No.24 to an extent of 293.33 Sq. yards situated at Naspur village and revenue mandal of Naspur of Mancherial district. The lower court has examined the petition affidavit and documentary evidence which presented by the petitioner and respondent under Ex.P1 to P8 but whereas it ought to be marked under series A. On the other hand the respondent documents marked under R series whereas it ought to be marked under B series. Ex.R1 to R27 marked on behalf of respondent.

10. The contention of the petitioner is that the petitioner is absolute owner and possessor of petition schedule property through Ex.A1 registered sale deed document No. 7396/2018, dated 02-07-2018 and the same was purchased from one Dugirala Vijay Dattu. The vendor of the petitioner purchased the same from one Laxminarayana Sharma and Mujahid Pasha under Ex.A2 registered document No.291/2003, dated 22-01-2003 and the vendor of the petitioner also mutated his name under revenue records as per Ex.A3 ROR proceedings No.ROR/6A/Naspur/41/2004, dated 20-02-2004. Therefore, the petitioner is absolute owner and possessor of the petition schedule property in sy.No.37, admeasuring 293.33 Sq. yards in plot No.24 and the respondent had interfered the petition schedule property on 05-10-2018 along with some other persons and started digging the trenches over the petition schedule property and the same was restricted by the petitioner with the help of neighbors and well wishers.

11. On perusal of the Ex.A1 i.e. registered sale deed document NO.7396/2018, dated 02-07-2018 shows that the petitioner purchased the property from one Dugirala Vijay Dattu. It shows that the vendor of the petitioner had immovable property which acquired through document No.291/2003, dated 22-01-2003 before the Sub Registrar, Mancherial and the same was mutated on the name of the vendor of the petitioner vide proceeding No.ROR/Naspur/41/04, dated 10-02-2004, but the vendor of the

petitioner has not shown under Ex.A1 the nature of immovable property whether it is house plot or agriculture land, but simply it has mentioned the nature of the immovable property and it was comes under the ROR Act and the same was got patta in favour of the vendor of petitioner, the nature of property does not disclose any survey number or extent of the land and place of the land. Further Ex.A1 shows that petitioner has purchased immovable property from the vendor of the petitioner for Rs.90,000/- only. The Ex.A1 mentioned the details of immovable property in page No.3 that the immovable property is house open plo9t in sy.No.37 vide plot No.24 to an extent of 293.33 Sq. yards only.

12. Ex.A2 is the original registered document No.291/2003, dated 22-01-2003 shows that the vendor of the petitioner i.e. Dugirala Vijay Dattu/ S/o Narsaiah has purchased the property from Mujahid Pasha and Laxminarayana Sharma. Ex.A2 also does not disclose the nature of the property except showing the schedule. Ex.A2 shows that house residential plot in sy.No.37 to an extent of 293.33 Sq. yards vide plot No.24. Ex.A2 clearly shows that the vendor of then plaintiff has purchased not agricultural land, it is residential plot in the year 2003. So the petition schedule property is not agricultural land and does not comes under the ROR act for mutations infvour of vendor of the petitioner or petitioner in revenue records.

13. Ex.A3 is proceedings of the mandal Revenue Officer vide Proc.No.ROR/6A/Naspur/41/2004, dated 10-02-2004 it shows that the vendor of the petitioner has mutated his name under ROR Act 5a & 9 (1) (I) (II) (III) of AP ROR Act 1989, whereas the revenue authorities has no authorization to mutate the house property other than agricultural land. The Tahsildar, Mandal Revenue Officers are deals with the agricultural land but not residential land. Hence, Ex.A3 is not supporting the case of the petitioner.

14. Ex.A4 is certified copy of registered sale deed document No.618/2000, dated 06-03-2000 shows that petitioner's vendor of the vendor purchased the property from one Laxminarayana Renwa, S/o Chunilal and it discloses that vendor's of the vendor got the property through civil suit vide O.S.No.15/1991 on the file of Senior Civil Judge, Asifabad and the same was decreed and also executed under EP NO.4/1997, that the property was executed through the Senior Civil Judge, Asifabad. Ex.A4 shows that the property to an extent of 4 acres land in Sy.No.37 of Naspur of Mancherial. But petitioner/plaintiff has failed to file judgment in OS No.15 of 1991 which passed by the learned Senior Civil Judge, Asifabad which is very necessary and crucial judgment to establish the petitioner claim and to show validity of it.

15. Ex.A5 is certified copy of pahani for the year 1998-99 shows that the land in Sy.No.37 to an extent of Ac.4.02 gts was in possession of Chunilal. Ex.A6 is certified copy of pahani for the year 2003-04 shows that land in Sy.No.37 to an extent of 293.33 Sq. yards was in possession of Dugirala Vijaya Dattu who is the vendor of the petitioner herein. Ex.A7 is certified copy of pahani for the year 2009-10 shows that land in sy.No.37 to an extent of 293.33 Sq. yards of Naspur was in possession of Dugirala Vijaya Dattu, S/o Narsaiah. Ex.A8 is certified copy of cancellation of sale deed document No.7558/2018 vide document No. 12566/2018 shows that due to the nonpayment of sale consideration, Penta Mallaiah, S/o Rajaiah, R/o Ramnagar, Mancherial has cancelled the sale deed document No.7558/2018 executed by him infavour of Nalla Sanjeev reddy, S/o Pulla reddy, Occ: singareni employee, R/o Ramakrishnapur, Mandamarri and there was no further any transaction occurred through registered document No.7558/2018.

16. Ex.B1 is registered sale deed vide document No.593/1991, dated 12-04-1991 shows that Laxminarayana Renwa, S/o Chunnilal sold the land to an

extent of 293.33 Sq.yards in Sy.No.37 situated at Naspur village to the Kurshidunnisha Begum, W/o Md.Abdul Wajid. Ex.B1 is registered on 12-04-1991 before the Sub Registrar, Mancherial which is prior to the orders in EP No.4/1997 in OS No.15/1991 on the file of Senior Civil Judge, Asifabad, whereas the petitioner i.e. appellant herein has failed to produce any document related to OS No.15/1991 or EP No.4/1997 as the vendor's vendor of petitioner acquired the petition schedule property through EP No.4/1997. Except mentioning in Ex.A4 (ExP4) which is registered sale deed No.618/2000, dated 613/2000. But the Ex.A4 is executed by the Executive court Senior Civil Judge's court, Asifabad on behalf of Laxminarayana Renwa.

17. Ex.B2 is certified copy of registered sale deed vide document No.10753/2015, dated 01-10-2015 showing that vendor of the respondent purchased the petition schedule land from one Abdul Azeez. Ex.B3 certified copy of registered sale deed shows that respondent purchased the petition schedule land through registered document No.11448/2017, dated 13-12-2017. Ex.R4 is certified copy of registered sale deed vide document No.3171/1999, dated 24-11-1999 showing that vendor of the respondent's vendor purchased the land from Kursidunnisa Begum. Ex.B5 is certified copy of memorandum of deposit of title deeds shows that sale deeds under Ex.R1 to R4 and the ROER proceedings issued by Tahsildar, Naspur and the construction permission along with sketch plan are deposited with the bank. Ex.B6 is four photographs along with compact disc shows that some construction made in the land of respondent. Ex.B7 to B23 are certified copies of pahanies for various years. Ex.B24 is the sale deed executed by Penta Mallaiah in favour of one Nalla Sanjeeva Reddy, Ex.R25 is the receipt obtained through mee seva. Ex.B26 is the NPDCL new connection application form. Ex.B27 is the bill.

18. As seen from the document under Ex.B1 (Ex.R1) Kursidunnisa Begum, W/o Mohd. Abdul Wajid or Laxminarayana, S/o Chunilal have not made as

parties in OS No.15/1991. The nature of the suit is simplicitor for permanent injunction, but not declaration of title. As seen from the documents presented by the both parties before the lower court is disputes on title of the petition schedule property, if the petitioner is not seeks to grant injunction without declaratory relief. Basing on the documents presented by both parties, the lower court has rightly dismissed the IA.

19. The above discussion, prima-facie shows that vendor of the petitioner was not in physical possession in the year 1991 over the petition schedule property i.e. land to the extent of 293.33 Sq.yards in sy.No.37, plot No.24, situated at Naspur village of Naspur mandal of Mancherial district. The learned trial judge had thoroughly discussed about the documentary evidence on record and rightly came to the conclusion that petitioner is failed to prove his prima-facie case and possession over the petition schedule property i.e. land to the extent of 293.33 Sq.yards in sy.No.37, plot No.24, situated at Naspur village of Naspur mandal of Mancherial district. Hence, this point is answered against the appellant.

20. **POINT NO.2:**

This appellant court does not see any reason to infer with the orders in I.A.No.824/2018 in OS No.259/2018 passed by the Prl. Junior Civil Judge, Mancherial. Hence, this point is answered against the appellant.

21. **POINT NO.3:**

In view of the findings in point No.1 & 2 this point is also answered against the appellant.

22. **POINT NO.4:**

IN THE RESULT, this appeal is dismissed by confirming the orders passed by the Prl. Junior Civil Judge, Mancherial passed in I.A.No.824/2018 in

OS No.259/2018 on the file of Prl. Junior Civil Judge, Mancherial. No order as to costs.

Partly typed to my dictation by the Steno, partly dictated to the Stenographer, transcribed by her and after corrections pronounced by me in the open court on this 31st day of December, 2019.

III Addl. Dist. and Sessions Judge (FTC),
Asifabad,
FAC:II Addl. Dist. and Sessions Judge (FTC),
Mancherial.