
(2008) 07 AP CK 0045
In the Andhra Pradesh High Court
Case No : CRP No. 2181 of 2008

Kasturi Venkata Subbaiah and Others	APPELLANT
Vs	
Veerapareddy Yasodamma	RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2008) 6 ALD 90

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Nimmagadda Satyanarayana, for the Appellant; M. Balaji, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This civil revision petition is directed against the order dated 10.4.2008 in LA. No. 454 of 2002 in LA. No. 379 of 2002 in O.S. No. 66 of 2002 on the file of the Court of the Senior Civil Judge, Rajampet.

2. The revision petitioners are the defendants in the suit filed by the respondent herein for specific performance of agreement of sale in respect of the suit schedule properties. Along with the suit, the plaintiff/ respondent herein filed IA No. 379 of 2002 for grant of temporary injunction restraining the defendants/ revision petitioners from interfering with the suit schedule property. The Court below granted ad interim injunction on 9.10.2002. The defendants/ revision petitioners filed their counters contesting the said application for temporary injunction.

3. While IA No. 379 of 2002 for temporary injunction was yet to be heard, the plaintiff/respondent herein filed another application being LA. No. 454 of 2002 on 28.11.2002 for grant of police aid for implementation of the order of ad interim injunction. The said application was also opposed by the defendants/revision petitioners by filing a counter. However, no final orders were passed on any of

the said applications and they were merely kept pending.

4. While so, on 20.6.2007 IA No. 379 of 2002 filed for temporary injunction was dismissed for non-prosecution by the plaintiff/respondent herein. Subsequently, on an application made by the plaintiff/respondent herein, LA. No. 379 of 2002 was restored to file by order dated 10.4.2008. Surprisingly on the same day i.e., 10.4.2008 the Court below allowed LA. No. 454 of 2002 also thereby granting police aid for implementation of the order of ad interim injunction dated 9.10.2002.

5. The said order made in LA. No. 454 of 2002 is under challenge in this civil revision petition.

6. I have heard the learned Counsel for both the parties and perused the material on record.

7. There can be no dispute about the inherent powers of a Court to grant police aid for implementation of its orders so as to meet the ends of justice and to prevent abuse of process of the Court. Such a power can be exercised even to enforce the order of ad interim injunction. However, the question is whether the Court below is justified in granting police aid on 10.4.2008 on an application filed in the year 2002 for the purpose of enforcement of ad interim injunction dated 9.10.2002.

8. It is relevant to note that the defendants/revision petitioners filed counter contesting the application for temporary injunction in the year 2002 itself. However, the application was kept pending for a long time and ultimately it was dismissed for default on 20.6.2007. Thereafter, there was no order in operation till the application was restored to file on 10.4.2008.

9. Even while seeking restoration, the plaintiff did not allege or establish any attempt on the part of the defendants to violate the order of ad interim injunction warranting grant of police aid. In the circumstances, what prompted the Court below to grant police aid on 10.4.2008 on the basis of the allegations made in the application filed in the year 2002 is un-understandable.

10. It is also relevant to note that in LA. No. 454 of 2002 filed for police aid, a counter was already filed by the defendants/petitioners herein. However, even without referring to the said counter the Court below allowed LA. No. 454 of 2002 by a cryptic order which runs as under:

Heard the learned Counsel for the petitioner, and the Counsel for the respondents. The I.A. No. 379/2002 is restored to file an injunction order already granted on 9.10.2002 is continued. As there is injunction order pending issued by this Court the bounden duty of this Court to protect its own order. This Court has no alternative except to grant police aid to the petitioner to protect the injunction order already granted on 9.10.2002 in LA. No. 379/2002. In order to protect the own order of this Court and in view of the facts and circumstances of the case, I have no hesitation to say that the petitioner herein is entitled for the

relief of police aid to protect the injunction order already granted by this Court on 9.10.2002 in LA. No. 379 of 2002 and thereby this petition merits to be allowed, and accordingly this petition is allowed, in the circumstances without costs.

11. As rightly submitted by the learned Counsel for the petitioners, since IA No. 379 of 2002 filed under Order 39 Rules 1 and 2 of C.P.C. filed for temporary injunction has not yet been decided on merits despite counter filed by the defendants, the Court below ought not to have granted police aid for enforcement of the order of the ad interim injunction dated 9.10.2002. Particularly in the absence of any fresh material to show that there was any attempt on the part of the defendants to violate the order of injunction, there was absolutely no justification to grant police aid. Moreover, except observing that since there is an order of injunction the Court is bound to protect its own order by granting police aid, the Court below did not assign any reasons which warranted granting the relief of police aid.

12. From the facts and circumstances of the case noticed above, I am of the opinion that the Court below committed a grave error in granting police aid firstly, without disposing of the application for temporary injunction on merits and secondly without assigning any reasons for grant of such police aid. At any rate, in the absence of any fresh material the impugned order granting police aid on an application made in the year 2002, on the face of it, amounts to erroneous exercise of jurisdiction conferred under law.

13. Viewed from any angle, the order under revision being contrary to law is unsustainable. Accordingly, the same is hereby set aside and the civil revision petition is allowed with a direction to consider and decide LA No. 454 of 2002 after disposal of I.A No. 379 of 2002 filed for temporary injunction on merits. No costs.