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**(2013) 11 AP CK 0142**

**In the Andhra Pradesh High Court**

**Case No : Civil Revision Petition No. 2125 of 2013**

Mettu Malyadri

APPELLANT

Vs

Mettu Sivaiah

RESPONDENT

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**Date of Decision : 07-11-2013**

**Acts Referred:**

**Citation :** (2014) 1 ALD 704 : (2014) 3 ALT 17

**Hon'ble Judges :** B. Chandra Kumar, J

**Bench :** Single Bench

**Advocate :** M. Venkata Narayana, for the Appellant; P. Rajasekhar, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

B. Chandra Kumar, J.—This CRP is directed against the order and decretal order dated 15.03.2012 passed in I.A. No. 24 of 2013 in O.S. No. 36 of 2012 by the Principal Junior Civil Judge, Kavali. The respondent herein filed the suit for injunction and I.A. No. 103 of 2012 for grant of ad interim injunction. The lower Court granted injunction order dated 29.10.2012. Then the respondent herein filed I.A. No. 24 of 2013 seeking police aid. By an order dated 15.03.2013 the lower Court allowed the said petition and ordered police aid to the respondent. Aggrieved by the same, the petitioner filed this petition.

2. The main contention of Sri M. Venkata Narayana, learned counsel for the petitioner, is that the lower Court ought to have considered that no application was filed under Order 39 Rule 2(a) CPC and without resorting to the procedure prescribed under Order 39 Rule 2(a) CPC and without considering the facts and circumstances of the case the lower Court straightaway granted police aid. He has relied on a decision reported in Kanwar Singh Saini Vs. High Court of Delhi, Sri P. Rajasekhar, learned counsel for the respondent, has referred to the affidavit filed by the respondent herein in support of the application filed seeking police protection and the counter filed by the petitioner herein in the said application and submits that the Court below, having regard to the facts and

circumstances of the case, granted police aid. It is also submitted that a specific averment of the respondent that the petitioner obstructed while he was attempted to make construction on 22.12.2012 is not denied. He has also relied on the judgments of this Court reported in Polavarapu Nagamani and Others Vs. Parchuri Koteswara Rao and Others, and B. Chandra Sekhar Reddy and others Vs. K. Naga Raju Yadav and another, in support of his contention that where situation warrants the Courts have been granting police aid.

3. It is not in dispute that the petitioner and the respondent are brothers. The specific case of the respondent is that his father late Malakondaiah sold 20 Ankanams of land out of 30 Ankanams to him under a registered sale deed dated 16.05.1987 and subsequently he executed an unregistered will deed dated 15.11.1988 in favour of his mother who subsequently executed a settlement deed in favour of the respondent. The case of the petitioner is that 30 Ankanams is joint family property in which he is having half share and after the death of his father a division was made in which he got half share. It is also his case that subsequently his son filed a suit for partition in O.S. No. 45 of 2012 claiming a share in the joint family property against himself, his mother and the respondent herein.

4. The rival claims and the relationship of the parties have to be kept in mind. One of the points raised by Sri M. Venkata Narayana is that unless late Malakondaiah had an absolute right to sell the land in favour of his younger son, the respondent herein, the sale deed itself would become void. It is also his submission that there is nothing on record to say that the disputed property is self acquired property of late Malakondaiah. Anyhow the question whether the petitioner herein has a share in the disputed property or not or whether the sale deed executed by Malakondaiah and subsequent Will Deed executed by him in favour of his wife are valid or not have to be decided by the trial Court after full fledged trial and this Court cannot express any opinion on the said issues at this stage.

5. However, the fact remains that the petitioner and the respondent are real brothers and the son of the petitioner filed a suit for partition in O.S. No. 45 of 2012 and the same is pending. It also appears that the son of the petitioner sought an interim direction not to change the physical features of the petition schedule property during the pendency of O.S. No. 45 of 2012. The main purpose of granting any injunction under Order 39 Rule 1 CPC is to protect the property and to see that the property is not wasted nor damaged. Order XXXIX Rule 1 CPC is as follows.

1. Cases in which temporary injunction may be granted.-Where in any suit it is proved by affidavit or otherwise-

a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

b) that the defendant threatens, or intends, to remove or dispose of his property

with a view to defrauding his creditors,

c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Rule 2 of Order XXXIX deals with a situation where there is continuance of breach of contract or other injury of any kind and to restrain the defendant from committing a breach of contract or other injury of any kind. Order XXXIX Rule 2A(1) and (2) deals with the consequence of disobedience or breach of injunction which is as follows.

2A. Consequence of disobedience or breach of injunction.-(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

6. Thus the main purpose of granting injunction is to see that a party who is in peaceful possession is not dispossessed and to see that the property in dispute is not being wasted, damaged or alienated by any party to the suit pending disposal of the suit. As far as granting of police aid is concerned there cannot be any dispute with regard to principles laid down in the decisions cited by either side. However, the Courts have to see the facts and circumstances of each case. Where it appears that a person having no right and title wrongfully interferes with the possession of any other person who is lawful owner of the property then the Court is always justified in granting police aid to protect the possession of such party, but where it appears to the Court that a party may have a right by birth for example a party claiming right as a coparcener in a property or a share in the property then the Courts must be slow in granting police aid in such a situation. As far as brothers and any other person who have share in the property are concerned every shareholder need not be in actual possession of the property. Merely because a person is not in actual possession of the property

or may be residing at some other place, that does not mean that, he has no right in the property, but however where a party has been in continuous possession of the property for a considerable period and claims right over such property, the Court is justified in protecting his possession temporarily till the rights of the parties have been crystallized. But this does not mean that a party can alter the physical features of any property or make constructions in a disputed property particularly where other side party claims a share in the property and particularly when a partition suit is pending between the parties or between the persons claiming under the parties to the suit.

7. In this case, admittedly the son of the petitioner filed a suit for partition that means the son of the petitioner has been claiming share in the property. It may be a fact that though the respondent suffered an order of injunction he has not carried the matter in appeal and the injunction order granted against him is still in force. The fact remains that the injunction order passed against the petitioner is in force. The petitioner cannot interfere with the possession of the respondent, but at the same time the fact remains that the son of the petitioner filed a suit for partition and also claimed that the physical features of the plaint schedule property should not be changed during the pendency of the said suit and it appears that the matter is pending before the Senior Civil Judge Court, Kavali. In the circumstances, it appears that the petitioner though claimed that the respondent interfered when he tried to make a construction on 22.12.2012 and the said fact is not denied by the petitioner, but having regard to the facts and circumstances of the case it appears that the lower Court is not justified in granting police aid. The lower Court ignored the relationship between the parties and rival claims of the parties and the fact that the son of the petitioner filed a suit for partition before the Senior Civil Judge Court, Kavali and the same is pending. Normally in civil matters unless and until the rights have been crystallized and it is clear to the mind of the Court that a party without any semblance of right is violating the orders of the Court the interference of the police should not be called for. Subject to the observations made supra, the revision petition is allowed and the impugned order is set aside. No costs. As a sequel, the miscellaneous petitions, if any, pending in this revision petition shall stand closed.