

(2011) 07 AP CK 0065

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No: 2549 of 2011

Paruchuri Siva Ramprasad Rao

APPELLANT

Vs

Smt. Bala Tripura Sundari Rao

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 10, 145

Citation : (2011) 07 AP CK 0065

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Challa Srinivasa Reddy, for the Appellant; T. Sujana Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sri Justice R. Kantha Rao

1. This Civil Revision Petition is filed by the Defendant against the order dated 21-4-2011 in IA. No. 515 of 2011 in I.A. No. 34 of 2011 in OS. No. 11 of 2011 passed by the Senior Civil Judge, Bhodan, Nizamabad district, allowing the application filed by the Plaintiff u/s 151 of the CPC seeking to grant police-aid by way of directing the Station House Officer, Bhodan (R) Police Station to protect the possession of the Petitioner.

2. Heard Sri Challa Srinivasa Reddy, the Learned Counsel for the Revision Petitioner and Sri T. Sujana Kumar, the Learned Counsel representing the Respondent.

3. The Revision Petitioner is the brother of the Respondent. She filed OS. No. 11 of 2011 for declaration of the title and perpetual injunction in respect of suit schedule land bearing survey No. 207/AA and survey No. 210/E/1 admeasuring to an extent of Ac:3-24 gts and 0-27 gts., respectively, total extent Ac:3-11

guntas situated at Pentakurd villasge of Bodhan Mandal. She based her claim on a registered gift settlement deed vide document No. 141/99, dated 18-1-1999 executed by her father. In the said suit, she filed I.A. No. 34 of 2011 seeking temporary injunction restraining the Revision Petitioner from interfering with her possession and enjoyment of the suit schedule land. The learned Senior Civil Judge, Bodhan granted temporary injunction exparte on 04-2-2011 and subsequently on hearing both sides the order was made absolute on 21-2-2011. Thereafter, the Respondent filed I.A. No. 515 of 2011 before the learned Senior Civil Judge u/s 151 of the CPC seeking to grant police-aid for implementation of temporary injunction order by way of restraining the Revision Petitioner from interfering with her possession and enjoyment of the suit schedule land. The learned Senior Civil Judge allowed the petition, granted police-aid and issued a direction to the Station House Officer, Bodhan Police Station (Rural) to protect the possession of the Plaintiff-Respondent and to enforce the temporary injunction order.

4. Challenging the legality and correctness of the order, the Revision Petitioner filed the present Civil Revision Petition.

5. It is a matter of record that earlier to the suit instituted by the Respondent i.e., OS. No. 11 of 2011, the Revision Petitioner filed OS. No. 48 of 2010 in the same Court seeking the reliefs, namely; a declaration that the suit schedule land is the ancestral joint family property left by late Parchuri Venkateswara Rao, the father of the parties and also cancellation of registered gift settlement deed, vide document No. 141/99, dated 18-1-1999 executed by the father of the Respondent in her favour. While the said suit was pending, at the instance of the Respondent, the Sub-Divisional Magistrate, Bodhan initiated proceedings u/s 145 Code of Criminal Procedure Feeling aggrieved, the Revision Petitioner filed Criminal Petition No. 10964 of 2010 to quash the order passed by the Sub-Divisional Magistrate in the proceedings u/s 145 Code of Criminal Procedure The learned single Judge considering that the dispute between the parties was pending before the Civil Court in I.A. No. 251 of 2010 in OS. No. 48 of 2010 quashed the proceedings before the Sub-Divisional Magistrate, Bodhan and observed that it is open to the parties to approach Civil Court for appropriate reliefs in the pending suit, subsequently, the Respondent filed OS. No. 11 of 2011 against the Revision Petitioner for the reliefs afore-mentioned. Therefore in substance, the subject matter of the dispute in both the suits is the same and the issue involved for consideration is also substantially same.

6. The Revision Petitioner filed I.A. No. 251 of 2010 in OS. No. 48 of 2010 seeking the relief of temporary injunction against the Respondent and the said application was dismissed on 08-7-2010. Aggrieved by the said order, he preferred CMA. No. 21 of 2011 which is now pending before VII Additional District Judge, Nizamabad at Bodhan. In the said CMA, the Revision Petitioner filed I.A. No. 202 of 2011 seeking stay of operation of the order passed by the learned Senior Civil Judge, dismissing the injunction petition but the said

Interlocutory Application was dismissed by the learned VII Additional District Judge, Bodhan.

7. The Learned Counsel for the Revision Petitioner, Sri Challa Srinivas Reddy would submit that by virtue of Section 10 of the CPC and also in view of the direction of the learned single Judge in Crl.P. No. 10964 of 2010 directing the parties to approach civil court and seeking appropriate reliefs in the pending suit, no order can be passed in the subsequent suit and the only remedy open for the Respondent is to seek appropriate interim reliefs only in the earlier suit i.e., OS. No. 48 of 2010. Thus, according to the Learned Counsel the interim injunction granted by the learned Senior Civil Judge in IA. No. 34 of 2011 in OS. No. 11 of 2011 is illegal and as such the order passed in IA. No. 515 of 2011 granting police-aid to enforce the said order in IA. No. 34 of 2011 in OS. No. 11 of 2011 is also illegal and unsustainable.

8. On the other hand, Sri T. Sujan Kumar, the Learned Counsel appearing for the Respondent would contend that the reliefs prayed for in both the suits may be different but issues to be determined are substantially the same. He would further contend that the observation made by the learned single Judge in Crl.P. No. 10964 of 2010 to the effect that it is open to the parties to approach the Civil Court and seek appropriate reliefs in the pending suit does not preclude the Respondent to file OS. No. 11 of 2011 and any interim order passed therein cannot be said to be illegal.

9. Section 10 of the CPC reads as follows:

Section 10: Stay of Suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending, in the same or any other Court in (India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by (the Central Government) and having like jurisdiction, or before (the Supreme Court).

Explanation: The pendency of a suit in a foreign Court does not preclude the Court in (India) from trying a suit founded in the same cause of action.

10. The provision lays down that the Court shall not proceed with the trial of a suit in which the matter in issue like thereto directly and substantially in issue in previously instituted suit between the same parties. From the language of Section-10 it is obvious that only the trial of the subsequent suit is stayed if the conditions envisaged in the provision are satisfied. There is no prohibition as such for passing any interlocutory order in subsequently instituted suit. The object underlying the provision is to prevent the courts of concurrent jurisdiction from recording conflicting findings on the same issue because any such finding recorded in the earlier suit would operate as resjudicata in the subsequent suit. Either the institution of the subsequent suit or passing interlocutory orders in the

said suit are not barred. What is barred is the trial of subsequent suit. Section lays down only the rule of procedure and it does not affect the jurisdiction of the court to entertain the subsequent suit and to pass the interlocutory orders. By virtue of Section 10 even where the subsequent suit is liable to be stayed the jurisdiction or power of the court where the subsequent suit is instituted, in so far as entertaining interlocutory applications and passing orders therein is not affected. Therefore, it cannot be said that the learned Senior Civil Judge acted illegally either in passing the order granting interim injunction or the order granting police aid.

11. The learned Senior Civil Judge dismissed I.A. No. 251 of 2010 in OS. No. 48 of 2010 filed by the Revision Petitioner having found that the Revision Petitioner failed to make out a prima facie case of possession and was unable to convince that the balance of convenience is in his favour. Further the learned Senior Civil Judge considering Ex.A-1 certified copy of registered gift settlement deed vide document No. 141/99 dated 18-1-1999, Ex.A-3 xerox copy of pattedar passbook, Ex.A-4 xerox copy of title deed book, Ex.A-5 xerox copy of land revenue receipt and Ex.A6 true copy of pahani for the year 2010-2011 filed by the Respondent advertent to the rival contentions of the parties thoroughly satisfied that the Respondent could be able to make out prima facie case that the balance of convenience is in her favour and also that unless temporary injunction is granted she will suffer irreparable loss and injury.

12. On further being satisfied that unless the police-aid is granted, the order granting temporary injunction in favour of the Respondent-Plaintiff is becomes in effective and it is not possible for her to protect her possession over the suit schedule land granted police-aid. The order granting police-aid, which is impugned in this Revision does not suffer from any illegality or irregularity and the same is strictly in accordance with law. Therefore, this Court will not interfere with the said order in exercise of its power under Article 227 of the Constitution of India.

13. The Civil Revision Petition is therefore dismissed. There shall be no order as to costs.