
(2004) 04 AP CK 0048
In the Andhra Pradesh High Court
Case No : CRP No. 4395 of 2003

Vanga Buchi Reddy and Others

APPELLANT

Vs

Vanga Madhusudhan Reddy

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

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

Citation : (2004) 3 ALD 815 : (2004) 4 ALT 267

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : D.V. Sitaramamurthy, for the Appellant; L. Prabhakar Reddy, for the Respondent

Judgement

C.Y. Somayajulu, J.—Respondent filed OS No. 96 of 2003 in the Court of the Junior Civil Judge, Kalwakurthy, for perpetual injunction restraining the revision petitioners and their men from interfering with the suit land of Ac.2.00 in Sy.No. 12 and the two bore-wells therein and filed IA No. 241 of 2003 therein under Order XXXIX Rule 1 of CPC seeking an ex parte interim injunction during the pendency of the suit restraining the revision petitioners from interfering with his (respondent) possession of suit land and the two bore-wells therein. The Court while granting an ex parte order of interim injunction on 8-7-2003 posted the case to 22-7-2003 for appearance of revision petitioners. After service of notice, revision petitioners filed a petition to advance the said IA.No. 241 of 2003 and so the said IA. was advanced to 21-7-2003 and then was adjourned to 23-7-2003, on which date revision petitioners filed their counter. The Court posted the matter to 25-7-2003 for hearing. From 25-7-2003 it was adjourned to 29-7-2003. On 29-7-2003, at the request of revision petitioners, the same was adjourned to 4-8-2003 extending the injunction till then. From that date, it was adjourned to 6-8-2003. On 6.8.2003, the learned Junior Civil Judge noting "counter is filed" adjourned the case to 11-8-2003, without noticing that counter was already filed on 23-7-2003. On 11-8-2003 the docket reads "Counter filed."

Respondents not ready. Injunction extended till further orders" and posted the matter to 19-8-2003 and from that date to 26-8-2003 and from that date to 5-9-2003, to 12-9-2003 and to 25-9-2003. In the meanwhile, respondent filed IA.No. 284 of 2003 u/s 151 CPC seeking police aid to enforce the ex parte order of injunction granted in his favour. The learned Junior Civil Judge, by the order under revision, allowed the said petition. Questioning the same revision is preferred.

2. The main contention of the learned Counsel for revision petitioners is that when the revision petitioners have filed their counter in the injunction petition, the Trial Court was in error in not disposing of the injunction petition on merits and was in error in allowing the petition seeking police aid to implement the ex parte order of injunction. The contention of the learned Counsel for respondent is that revision petitioners who did not question the ex parte order of injunction, and who took time for enquiry in the injunction petition, cannot get away by violating the order of injunction passed against them, though it is an ex parte order and since revision petitioners have been violating the orders of injunction respondent had to file the petition seeking police aid and so the Trial Court did not commit any irregularity in allowing the prayer of the respondent for police aid.

3. The power of the Court to grant police aid to enforce an order or injunction, or ex parte injunction, cannot be doubted. But, when a person against whom the ex parte injunction is passed makes a request to the Court to hear the injunction petition on merits, Court should normally postpone the hearing of the petition seeking police aid to enforce the ex parte order of injunction, till the disposal, on merits of the injunction petition. If the person against whom an order of ex parte injunction is granted, had violated the order of injunction, petition under Rule 2-A of Order 39 CPC to punish him can be filed. It should be kept in view that granting police aid to implement an ex pane injunction, may some times cause prejudice and hardship to the opposite party, without hearing whom an injunction was granted against him.

4. Revision petitioners have filed their counter on 23-7-2003. The Trial Court went on adjourning the injunction petition from time to time as "call on". The time it spent for hearing the police aid petition could have been used for hearing of IA No. 241 of 2003 and that petition could have been disposed of on merits. If on merits in IA.No. 241 of 2003 it is found that the petitioner therein is not entitled to the injunction sought, and if the police, in view of the order impugned in this petition, were to arrest the revision petitioners under the guise of enforcing the ex parte order of injunction, the prejudice caused to the revision petitioners cannot be undone. If the said IA.No. 241 of 2003 is allowed on merits and if the revision petitioners violated or are continuing to violate the order of injunction either passed ex parte or on merits, they are liable for punishment. So, in my considered opinion, the Court below was in error in passing orders on the petition for police aid, without disposing of IA No. 241 of 2003.

5. Hence, the order under revision is set aside and IA No. 284 of 2003 is

remitted to the Trial Court for fresh disposal, after disposal of IA No. 241 of 2003 on merits as expeditiously as possible, at any rate before the end of April, 2003. Parties are directed to bear their own costs in this revision petition.