

THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

C.R.P.No. 1291 of 2023

ORDER:

This Civil Revision Petition has been filed by the appellants in the CMA.No.21 of 2022 against the orders of dismissal by the Principal District Judge at Bhongir, dated 14.02.2023. The CMA was filed by the plaintiffs challenging the orders dated 10.12.2021 in I.A.No.1 of 2021 in O.S.No.8 of 2021 on the file of Senior Civil Judge, Bhongir, declining to grant temporary injunction in favour of the petitioners/plaintiffs restraining the respondents/ defendants from interfering with the peaceful possession and enjoyment of the petitioners/plaintiffs over the petitioners suit schedule property.

2. Brief facts leading to the filing of the present Civil Revision Petition are that the suit in O.S.No.8 of 2021 was filed by the plaintiffs on the file of Senior Civil Judge, at Bhongir for declaration of title and permanent injunction against the defendants therein. The suit schedule property is

(A) agricultural land admeasuring Ac.0-29 ½ gts., in Survey No.570/E, Ac.0-18½ gts., in Survey No.571/EE, in total admeasuring Ac.1-08 gts., situated at Kondamadugu Village, Bibinagar Mandal, Yadadri Bhongir District;

(B) agricultural land admeasuring Ac.0-29 gts., in Survey No.570/EE and Ac.0-11 gts., in Survey No.571/AA1 and Ac.0-07½ gts., in Survey No.571/E2, in total admeasuring Ac.1-07½ gts., situated at Kondamadugu Village, Bibinagar Mandal, Yadadri Bhongir District;

(C) agricultural land admeasuring Ac.0-29½ gts., in Survey No.570/AA and Ac.0-18½ gts., in Survey No.571/EE, in total admeasuring Ac.1-08 gts., situated at Kondamadugu Village, Bibinagar Mandal, Yadadri Bhongir District.

3. The plaintiffs claimed that they are the owners and possessors of the suit schedule properties having inherited the same from their late father Kadem Mankaiah, S/o.K.Sailu, who died in the year 1994. Plaintiffs No.1 and 2 are the brothers and Plaintiff No.3 is the son of one of the other deceased brother. The late K.Mankaiah had five sons namely Yadaiah, Beerappa, Sathaiah, Vinod and Ramesh. After the death of the father K.Mankaiah, the land admeasuring Ac.5.38 gts., in Survey Nos.570 and 571, situated at Kondamadugu Village, Bibinagar Mandal, Yadadri Bhongir District, being ancestral property in the name of K.Mankaiah, was portioned into five equal parts towards the respective shares of the sons i.e., Ac.1-07½ gts., each. The brothers of K.Mankaiah namely Kadem Narsaiah and Kadem Yellaiah have sold their lands in favour of one Cherukuri Koteswara Rao, S/o.Venkata Swamy Naidu, under registered

sale deeds bearing Doc.No.152/1991, dt.21.01.1991 in respect of land admeasuring Ac.5-37 gts., and Doc.No.165/1991, dt.23.01.1991 in respect of land admeasuring Ac.5-38 gts., situated at Kondamadugu Village, Bibinagar Mandal, Yadadri Bhongir District. Consequently, the brothers of the plaintiffs No.1 and 2 and grandfather of the plaintiff No.3 namely Kadem Yadaiah and Kadem Vinod have also sold out their respective shares in favour of Cherukuri Koteswara Rao under the registered sale deed bearing Doc.No.1278/1994, dt.22.03.1994 and Doc.No.3818/1994, dt.27.07.1994 in respect of the land admeasuring Ac.1-07 gts., each, in total admeasuring Ac.2-14 gts. In view of all these documents, Koteswara Rao became the owner and pattadar of the land total admeasuring Ac.14-09 gts., situated at Kondamadugu Village, Bibinagar Mandal, Yadadri Bhongir District. The said Koteswara Rao died leaving behind him, his legal heirs i.e., (1) Cherukuri Subhadra, (2) Cherukuri Asha, (3) Cherukuri Varun i.e., defendants No.2 to 4. Subsequently, they have sold out the said lands in favour of the defendant No.5 under GPA validated by District Registrar, Nalgonda Vide File no.397/E/Val/2018, dt.26.11.2018 and in turn, the defendants No.2 to 5 have sold out the property in favour of the defendant No.1 under registered sale deeds

bearing Nos.1045/2019 and 1046/2019, dated 24.01.2019 on the file of SRO, Bibinagar. However, plaintiffs claim that the boundaries in the documents were wrongly mentioned only to grab the suit schedule properties of the plaintiffs illegally. The plaintiffs claim that they resisted the unsocial elements from interfering with their peaceful possession and enjoyment of the suit schedule properties. It was claimed that on the basis of wrong boundaries mentioned in the registered documents, the defendants placed a false sketch map before the revenue authority by including the land of the plaintiffs and they are trying to encroach into the suit schedule properties of the plaintiffs. The plaintiffs claim to have lodged a complaint before the P.S.Bibinagar, which was registered as Crime No.2 of 2020, dt.03.01.2020, under Sections 447, 427 and 506 of IPC.

4. It is submitted that the defendant No.1, thereafter made an application for grant of HMDA Layout over the schedule of properties for dividing into plots by showing the alleged registered sale deeds with wrong boundaries and vide L.P.No.174/LO/PLG/HMDA/2019, dt.19.06.2019, layout was granted in favour of the defendant No.1 without conducting any enquiry and inspection of the schedule of properties. It is

submitted that the plaintiffs made an application dated 24.01.2020 before the Commissioner /Planning Officer, HMDA, Tarnaka, Hyderabad, to cancel the layout permission dated 19.06.2019 and thereafter, the plaintiffs have filed suit vide O.S.No.8 of 2021 seeking declaration that the plaintiffs are the absolute owners and possessor of the suit schedule properties and to declare that the registered sale deeds bearing Nos.1045/2019 and 1046/2019, dt.24.01.2019 on the file of SRO, Bibinagar, in favour of the defendant No.1 as null and void and to cancel the same and to grant permanent injunction in their favour by restraining the defendants and the persons claiming through them from interfering with the peaceful possession and enjoyment of the respective suit schedule properties of the plaintiffs. Along with the suit, the plaintiffs have filed I.A.No.1 of 2021 seeking interim injunction against the defendants pending disposal of the main suit. The said I.A. was dismissed vide orders dt.10.12.2021.

5. The Lower Court observed that the plaintiffs have filed Exs.P1 to P3, the Pattedar pass books-cum-title deeds to show that they are the pattedars and possessors of Petition-A to C schedule properties and also filed certified copies of the

pahanies for the years 1954-1955, 1955-1956, 1957-1958, 1960-1961, 1962-1963, 1964-1965, 1966-1967 to 1972-1973, 1975-1976 to 1981-1982, 1983-1984, 1984-1985, 1986-1987 to 2002-2003 and 2004-2005 to 2014-2015 to show that their father and his brothers and thereafter the petitioners and their brothers have been in possession of the land situated in Survey Nos.570 and 571, situated at Kondamadugu Village and that the Court also observed that a copy of the representation which is filed by the petitioners to HMDA, Tarnaka, dt.24.01.2020 is marked as Ex.P5, the map prepared by the defendants for the purpose of Nala conversion before the RDO, Bhongir and is marked as Ex.P10, the encumbrance certificate dt.16.08.2021 marked as Ex.P11 and also the old ROR title deeds of petitioner Nos.1 to 3 marked as Ex.P8 along with Online1-B namoona of petitioners No.1 to 3 marked as Ex.P6 and online Dharani report of Petitioners No.1 to 3 marked as Ex.P7.

6. The Lower Court further observed that the Pahanies for the year 1995-96 showed Kadem Mankaiah as pattadar and possessor of only Ac.0.27 gts., in Survey No.570/AA and no land was shown in his name in Survey No.571 and that it is not known as to how the petitioners and their three brothers have

got each Ac.1.07½ gts., from their father Mankaiah, after his death and that the pahanies of the subsequent years do not show that Kadem Mankaiah had in all Acs.5.38 gts., of land in Survey No.570 and 571. It was further observed that the entries in the pahanies show that they are inconsistent from year to year. He referred to the document filed by the respondents, which is marked as Ex.R1, true copy of the extract of amendment register for the year 1998-1999, to observe that it shows mutation of patta of the lands standing in the name of Kadem Mankaiah into the names of his five sons i.e., Yadaiah, Beerappa, Sathaiah, Vinod and Ramesh after the death of Mankaiah and that the land in the name of Mankaiah was only to an extent of Ac.0-27gts., in Survey No.570 and that it does not show any land in Survey No.571 of Kondamadugu Village.

7. The Lower Court further observed that though the petitioners tried to prove their possession over the suit schedule properties by filing Ex.P1 to P3, online ROR 1-B namoona and online Dharani Portal reports, the documents i.e., the pahanies do not establish their possession over the suit schedule property and the extent of land stated to be owned and possessed by them, as they were contrary from year to year. Therefore, it is

observed that the petitioners have failed to establish their prima facie case of possession over the suit schedule property. Against these findings in I.A.No.1 of 2021, the petitioners filed CMA No.21 of 2022 on the file of District Judge, Nalgonda i.e., Bhongir, by raising the following grounds:

(i) Ex.R1 which is an extract of amendment register for the year 1998-1999 is not supported by any proceedings of Tahsildar and that Ex.R1 is prepared on the basis of pahanies 1993-94 alone which are stray entries and they are clerical error done by the then revenue officials. It is submitted that the revenue officials did not take pain to verify earlier and subsequent pahanies which clinchingly prove and establish the possession of the appellants over the suit schedule property.

(ii) As per the documents filed by respondents, the respondents purchased agricultural land in Survey No.570 admeasuring Ac.8-25 gts., and Survey No.571 admeasuring Ac.5-19½ gts., of Kondamadugu Village, under registered sale deed Documents No.1045/2019 and 1046/2019, dated 24.01.2019 from its original pattedars namely Cherukuri Subhadra and others, who are the legal heirs of Koteswar Rao, who originally purchased above said land from Kadem Yellaiah, Narsimha and Laxmamma in respect of land bearing Survey

Nos.570/part, admeasuring Ac.3-26 gts., and 571/part, admeasuring Ac.2-12 gts., total admeasuring Ac.5-38 guntas. It is further submitted that the boundaries mentioned in the registered sale deed of Documents No.1045/2019 and 1046/2019 are incorrect and in contradiction to the link document i.e., registered sale deed No.165/1991 and thus, the land of the petitioners was also included in the sketch map and that the Court below has failed to look into the family tree of Kadem Sailu who is the grandfather of plaintiffs and various documents executed by the legal heirs of K.Sailu and that the plaintiffs herein have not alienated their share of land and therefore, there is Ac.3-24 gts., in the names of legal heirs of Kadem Mankaiah, S/o.K.Sailu. The Lower Court has misread and has presumed admitted facts, only by looking at one document filed by the defendant.

8. It was submitted that as regards the plaintiffs claim about wrong entries, they have made an application to the revenue authorities and accordingly, revenue records have been amended after verification and that the Lower Court ought to have looked into all the documents filed by the plaintiffs, but ought not to have relied only on Ex.R1 to dismiss the

application filed by the petitioner. The Lower Court ought to have looked at the record for the current year i.e., Dharani Portal, which clinchingly established peaceful possession and enjoyment of the plaintiffs over the suit schedule property, and instead, has given finding that there are contrary entries from year to year in the pahanies comparing with the old pahanies i.e., 1954-1955 onwards. Therefore, the Lower Court ought to have considered all the documents particularly as on the date of filing of the suit.

9. Learned District Judge has looked at the copies of pahanies filed by the petitioners and observed that in the pahani for the year 1995-1996, one Kadem Mankaiah was recorded as the pattedar and possessor of the land to an extent of Ac.0-27 gts., in Survey No.570/AA and that said pahani did show any land in the name of Kadem Mankaiah in Survey No.571/A. He further observed that Cherukuri Koteswar Rao purchased Ac.4-37 gts., i.e., in Survey No.570/EE admeasuring Ac.3-26 gts., in Survey No.571/A admeasuring Ac.1-11 gts., from Kadem Mankaiah on 05.01.1991 under simple sale deed which was also signed by his sons namely Kadem Beerappa, Kadem Sathaiah and Kadem Vinod. The Learned District

Judge has also accepted the contention of the respondents that there is discrepancy in the pahanies for the year 1994-1995, 1995-1996 and in the pahanies for the year 1996-1997, since in the pahanies for the years 1994-1995, 1995-1996 the land to the extent of Ac.0-27 gts., only in Survey No.570/AA was reflected in the name of Kadem Mankaiah as possessor which is contrary to the earlier record and the said contrary error was not properly explained by the petitioners. He also observed that from Ex.R1 i.e., the amendment register for the year 1998-1999, the mutation of pattas of land standing in the name of Kadem Mankaiah in the name of his five sons, shows that the Kadem Mankaia had only land to an extent of Ac.0-27 gts., in Survey No.570 and it does not show that Kadem Mankaiah had any land in Survey No.571. Observing that there are discrepancies in the documents filed by the plaintiffs, the CMA was dismissed vide orders dated 14.02.2023. Challenging the same the present Civil Revision Petition is filed.

10. Learned senior counsel appearing for the plaintiffs reiterated the submissions made by the petitioners/plaintiffs in the suit as well as in the CMA and submitted that the total land of the plaintiffs in Survey Nos.570, 571 of Kondamadugu Village

is Ac.17-37 gts. It is submitted that the defendants have purchased Ac.14-09 gts., and the balance of Ac.3-26 gts., is remained the land of Mankaiah and his family members. He submitted that the defendants alleged that they have purchased the land in the year 1991.

11. To explain the entries in the pahanies, the learned counsel for the petitioners has referred to the copy of the pahani for the year 1993-1994 wherein the Survey No.570/AA and 571/AA, the total land admeasuring Ac.3-27 gts., is shown in the name of Mankaiah and the possessor is also shown as Mankaiah, i.e., the father of the plaintiffs No.1 and 2 and grandfather of plaintiff No.3 herein. He also referred to the pahani for the year 1994-95 wherein the Survey No.570/AA, the name of the pattadar as well as possessor to an extent of Ac.0-27 gts., is shown as Mankaiah and in respect of the Survey No.570/E, to an extent of Ac.3-26 gts, the name of Yellaiah is shown as the pattadar and possessor. It is submitted that there was an error in the revenue entries as instead of Ac.3-37 gts., Ac.3-27 gts., was reflected in the year 1993-1994, while for the year 1994-1995 only Ac.0-27gts., was reflected. He referred the pahani for the year 1996-1997 wherein, in respect of Survey

No.570/AA, Ac.1-33 gts., was shown in the name of Kadem Narsaiah, S/o.K.Mankaiah, while Ac.2-08 gts., was shown in the name of Kadem Mankaiah and in respect of Survey No.571/AA, Ac.1-14 ½ gts., was shown in the name of Kadem Mankaiah, S/o.Sayanna. Thus, he submitted that the omission which was committed in the year 1994-1995 was carried forward in the year 1995-1996 and therefore, the plaintiffs have made an application for correction of entries and in the year 1996-1997, the correction was made by recording to an extent of Ac.2-08 gts., in the name of Kadem Mankaiah after excluding the land alienated by the sons of Mankaiah to an extent of Ac.1-19 guntas. He submitted that no one has challenged the corrections made in the revenue entries in 1996-1997 and therefore, the said entries have become final.

12. Learned counsel for the petitioner has referred to the pattadar pass book of Kadem Sathaiah, S/o.K.Mankaiah, wherein the land in Survey No.570 to an extent of Ac.0-29½ gts., is reflected and pattadar pass book of the Kadem Ramesh in whose account, in the Survey No.570, an extent of Ac.0-29 gts., is reflected and in respect of Survey No.571 to an extent of Ac.0-18½ gts., is reflected. He also referred to pattadar pass

book of Kadem Beerappa, which reflected Ac.0-29½ gts., in Survey No.570 and Ac.0-18 gts., in Survey No.571. Learned counsel for the petitioner referred to Rule 26 of Telangana State Rights in Land and Pattadar Rules, 1971 and Rule 26(vi) thereunder referred to the possession of land and also to the Telangana Rights Act, 2020 under Section 11 and Section 2(8) thereof in support of his contentions. He submitted that in a suit for ad-interim injunction, lower Court is only required to look at the prima facie case, balance of convenience and irreparable loss as on the date of filing of the suit and the interim application and cannot go into the past history of the land and that too only for two years to deny the relief. He placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Indore Development Authority Vs. Manoharlal and Others**¹, for the proposition that a person with title is considered to be in actual possession and any other person is a trespasser. He submitted that the ordinarily, the owner of the property is presumed to be in possession and the presumption as to possession is in his favour. He submitted that the pahanies of relevant year also reflected the possession of the petitioners and the documents are also in favour of the

¹ (2020) 8 SCC 129

petitioners and therefore, the interim injunction ought to have been granted in favour of the petitioners/plaintiffs. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Sri.Bhimeshwara Swami Varu Temple Vs. Pedapudi Krishna Murthi and Others**², for the proposition that the presumption arising from several entries in the revenue records of large number of years in respect of ownership and possession of land with certain persons does not stand rebutted by mere stray entries in favour of others when evidence is of uncertain character and is inadequate. He therefore prayed that the orders in CMA.No.21 of 2022 dated 14.02.2023 and also I.A.No.1 of 2021 in O.S.No.8 of 2021 dated 10.12.2021 be set aside and the I.A.No.1 of 2021 may be allowed in favour of the petitioners/plaintiffs.

13. Learned counsel for the respondents, however relied upon the orders of the authorities below and the averments made in the counter affidavit. It is submitted that one Mr.Chelukuri Koteswar Rao purchased Ac.3-26 gts., in Survey No.570 part and Ac.2-11 gts., in Survey No.571 part under a registered sale deed Document No.152/1991, dt.21.01.1991

² AIR 1973 SC 1299

from Kadem Narsaiah and Kadem Mankaiah and also purchased Ac.3-26 gts., in Survey No.570 part and Ac.2-12 gts., in Survey No.571 under registered sale deed document No.165/1991 dt.23.01.1991 from Kadem Yellaiah, Kadem Narsaiah and Kadem Laxamma, W/o.K.Beerappa. It is also submitted that Cherukuri Koteswar Rao has purchased Ac.1-07 gts., in Survey No.570 part and 571 part of Kodamadugu Village under the registered sale deed document No.1278/1994 dt.22.03.1994 from Kadem Mankaiah, Kadem Mahesh Babu, S/o.K.Yadaiah and Kadem Ramesh Babu, S/o.K.Yadaiah. Thus, he also purchased Ac.1-07 gts., in Survey No.570 and 571 part under the registered sale deed document No.3818/1994 dt.27.08.1994 from K.Mankaiah and Kadem Vinod, S/o.K.Mankaiah and thus, in all Koteswar Rao purchased Ac.14.09 gts., in Survey Nos.570 and 571 of Kondamadugu Village. It is further submitted that Koteswar Rao has also purchased Ac.4-37 gts., in Survey No.570/EE from K.Mankaiah on 05.01.1991 under the simple sale deed which was also signed by Kadem Beerappa, Kadem Sathaiah and Kadem Vinod, who are the sons of K.Mankaiah and that the legal heirs of Koteswar Rao have succeeded to the said property under the Will.

14. It is submitted that the pahanies for the year 1994-1995, 1995-1996 reflects that K.Mankaiah had only 0-27 gts., in Survey No.570/AA, but for the year 1996-1997 it reflects Ac.2-08 gts., in Survey No.570/AA, which was contrary to the earlier record and that the manipulation took place after the death of Cherukuri Koteswar Rao in the year 1998. It is submitted that the plaintiffs have obtained pattedar passbooks for the first time which are not based on any mandatory revenue records and are therefore trying to make false claims. He claims that K.Mankaiah does not have any land in Survey Nos.570 and 571 of Kondamadugu Villagbe since he has sold away all of his land in the said survey numbers and therefore, the petitioners/plaintiffs cannot claim any land in the said survey numbers. It is submitted that there is no dispute with regard to the boundaries of the lands as claimed by the petitioners. He further submit that the Lower Courts have considered the documents filed by the plaintiffs and also the respondents and after considering the same, have denied the interim injunction in favour of the petitioners/plaintiffs. He therefore, prayed for dismissal of the Civil Revision Petition.

15. Having regard to the rival contentions and the material on record, this Court finds that as per the family tree given in CMA No.21 of 2022 at page No.13, there is no dispute that one Mr.Sailu was the original owner of the property and his property devolved on his three sons i.e., Kadem Mankaiah, Kadem Narsaiah and Kadem Yellaiah. Kadem Mankaiah is again succeeded of his five sons i.e., Kadem Yadaiah, Kadem Beerappa, Kadem Sathaiah, Kadem Vinod and Kadem Ramesh. Kadem Narsaiah is also succeeded by his son Kadem Mankaiah. Kadem Yellaiah is succeeded by his two sons i.e., Kadem Beerappa and Kadem Narsaiah and on the death of Kadem Beerappa, S/o K.Yellaiah, he was succeeded by his wife Laxamma. It is noticed that the land of Kadem Mankaiah, S/o K. Sailu, i.e., Ac.5-39 gts., in Survey Nos.570, 571 has devolved upon his five sons and two of his sons i.e., Kadem Vinod and Kadem Yadiah have sold their share of land during the life time of their father itself and the wife of Kadem Beerappa, S/o. Yellaiah has also sold her part of the property. The other three brothers have not parted with their share of land. As seen from the pahanies for the year 1993-1994, the name of Mankaiah, S/o.Sailu was shown as pattadar and possessor of Ac.3-27 gts., and thereafter, from the year 1996-1997 till date, the names of

his sons are reflected as pattedars as well as possessors. The discrepancy, if any, is only for the years 1994-1995 and 1995-1996. Though it is admitted that their names were not reflected for these two years, it is also equally proved that the names of any other person is not reflected in the pahanies. Therefore, it is to be presumed that the said Survey numbers were omitted to be recorded in the pahanies for the years 1994-1995, 1995-1996. Subsequently also, the pattadar passbooks have been issued in favor of the petitioners and even the latest Dharani Portal also reflects the name of the petitioners herein as the owners and possessors of the property. The Hon'ble Supreme Court in the case of **Indore Development Authority (cited supra)** has laid down that the title presupposes the fact that the title holders are also in possession of the property. In this case, not only the title is vested with the petitioners but their possession is also being reflected in the pahanies. As rightly pointed out by the learned counsel for the petitioners, in a suit for injunction, the possession of the parties as on the date of the suit is to be considered. The suit was filed in the year 2021 and the Courts below ought to have taken into consideration, the records in respect of the said agricultural year and not reflected upon the discrepancy, if any, in the earlier agricultural years.

The ROR-1 namuna, on which, the Lower Courts have placed reliance upon is not a document reflecting the names of the defendants on the suit schedule property and that too not for the relevant Agricultural year. In view of the same, this Court is satisfied that the Lower Courts have not considered the issue in proper prospective and have relied upon the irrelevant documents to deny the relief of injunction to the plaintiffs. In view of the same, the order dated 14.02.2023 in CMA No.21 of 2022 on the file of the Principal District Judge at Bhongir and also the order dated 10.12.2021 in I.A.No.1 of 2021 in O.S.No.8 of 2021 on the file of the Senior Civil Judge, Bhongir are both set aside and I.A.No.1 of 2021 is allowed. The Lower Court is however, directed to dispose of the suit by considering all the relevant documents and without being influenced by any observations in this order.

16. Accordingly, this Civil Revision Petition is allowed.

There shall be no order as to costs.

17. Miscellaneous petitions, if any, pending in this CRP, shall stand closed.

JUSTICE P.MADHAVI DEVI

Date: 29.08.2023

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PMD,J
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THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

C.R.P.No. 1291 of 2023

Dated: 29.08.2023

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