

Andhra High Court

Neetha Chintawar And Anr. vs Bodugam Gopi on 26 June, 2006

Equivalent citations: 2006 (5) ALD 95, 2006 (4) ALT 660

Author: L N Reddy

Bench: L N Reddy

ORDER L. Narasimha Reddy, J.

1. Plaintiff in O.S. No. 189 of 2005 on the file of the learned Junior Civil Judge, Adilabad, filed this revision. They filed the suit for the relief of perpetual injunction, against the respondent herein, in respect of the suit schedule property. I.A. No. 368 of 2005 was filed under Order 39 Rules land 2 C.P.C., for grant of temporary injunction. After issuing notice to the respondent, the trial Court granted temporary injunction in favour of the petitioners on 08-08-2005.

2. The petitioners filed I.A. No. 413 of 2005 Under Section 151 C.P.C. with a prayer to grant police protection, for implementation of the order of temporary injunction. The respondent opposed the application, alleging that there is some dispute as to the boundaries, it was also alleged that the petitioners are trying to grab the land of the respondent, under the guise of the order of temporary injunction. Through its order, dated 31-08-2005, the trial Court dismissed the I.A. Hence, this Civil Revision Petition.

3. Sri Pratap Narayan Sanghi, the learned Counsel for the petitioners submits that the view taken by the trial Court while dismissing the LA., cannot be sustained in law. He contends that the trial Court expressed its helplessness, even after taking note of the violation of the order of temporary injunction on the part of the respondent. Sri H, Venugopal, the learned Counsel for the respondent, on the other hand, submits that the petitioners were not in possession of the suit schedule property and they filed I.A.No. 413 of 2005, only with a view to grab the property which is in possession and enjoyment of the respondent.

4. The trial Court passed an order of temporary injunction in favour of the petitioners, after hearing the respondent. Since no CM. A. was filed against the same, the said order became final. The petitioners approached the trial Court with an application Under Section 151 C.P.C. with a prayer to grant police protection. They alleged that despite the orders of temporary injunction granted by the trial Court, the respondent entered the suit schedule land with a herd of buffaloes and that he threatened the petitioners with dire consequences, when they resisted. The respondent, on the other hand pleaded that the land with the boundaries mentioned in the suit schedule belongs to him and that the petitioners were trying to enter into the land, under the guise of the order of temporary injunction.

5. The trial Court made some interesting and peculiar observations, while dealing with the I.A. Firstly, it was observed that the questions as to whether the petitioners are in possession of the suit schedule property must be considered only at the full-fledged trial of the suit. Secondly, it was pointed out that it was for the petitioners to protect their possession, on the strength of the temporary injunction and that if they are unable to do so, the police protection cannot be granted. The relevant portion of the order reads as under.

No doubt the petitioners were given interim injunction in order to protect their possession and in spite of the said interim injunction they are coming forward with this application for implementation of orders of this Court. Photographs have also been filed by the respondent in order to show that the respondents are in possession of the suit land. All these aspects cannot be looked into at this stage and this being an Interlocutory Application unless and until there is a full-fledged trial it cannot be decided the rights of the parties, Prima facie as the petitioners have put forth a case and accordingly an ad-interim injunction has been granted to protect their possession and restraining the respondents and their men not to interfere. Having obtained injunction by the petitioners they could not be able to implement said order and coming with this application for police protection seems to be somewhat giving way for another litigation which cannot be entertained.

6. Keeping aside the grammatical disorders, it is difficult to approve the view taken by the trial Court. Once an order of temporary injunction was granted by the trial Court under Order 39 Rules 1 and 2 C.P.C., after hearing both the parties, the respondents cannot be heard to say that the suit schedule property is not in the possession of the petitioners. The very grant of an order of temporary injunction pre-supposes that the Court is satisfied as to the prima facie possession of the plaintiff over the suit schedule property and as to the balance of convenience in according protection for such possession, pending disposal of the suit. If the defendant in a suit is aggrieved by the grant of such an order, the only course open to him would be to prefer an appeal and if necessary, pursue the further remedy of revision etc. Having suffered an order of temporary injunction, the defendant cannot be permitted to plead that the plaintiff is not in possession of the suit schedule property.

7. The second observation made by the trial Court is equally untenable. For all practical purposes, it had annulled the order of temporary injunction granted by it rendered it ineffective. It hardly needs any emphasis that an order of temporary injunction would require the parties to it, to abide by the directions contained in it. Though, it is competent for a plaintiff to institute proceedings under sub-rule (2) of Rule 2 (sic. 2-A) of Order 39 C.P.C., if the defendant commits breach of the order of temporary injunction, he can also approach the Court, for police protection. In such an event, the Courts are under obligation to accord necessary protection. By ordering such applications, the Courts would not be extending any favour to the parties, but would be taking steps for effective implementation of their own orders and thereby, upholding the dignity and effectiveness of the institution of Judiciary.

8. A Division Bench of this Court in the case of Satyanarayana Tiwari v. S.H.O., P.S. Santhoshnagar held that it would be incumbent upon the civil Courts to ensure that the orders of temporary injunction passed by them are respected and implemented by the concerned. In the cases of P. Shanker Rao v. B. Susheela 2002 (2) ALT 606 and Sangu Brahman v. Station House Officer, this Court reiterated the said legal position. Therefore, the order passed by the trial Court cannot be sustained either on facts or in law.

9. Hence, the Civil Revision Petition is allowed and the order under revision is set aside. Since it is found that the order of temporary injunction passed by the trial Court is in force, I.A. No. 413 of 2005 is allowed; and the S.H.O Adilabad(Rural)P.S., is directed to grant necessary protection to the petitioners herein, to enforce the order of temporary injunction passed by the trial Court in I.A. No.

368 of 2005 in O.S. No. 189 of 2005. There shall be no order as to costs.