
T. Saritha Reddy and Another Vs T. Obireddy

C.R.P. No. 4139 of 2008

Court: Andhra Pradesh High Court

Date of Decision: Oct. 21, 2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 39 Rule 1, Order 39 Rule 2#Dowry Prohibition Act, 1961 – Section 3, 4#Penal Code, 1860 (IPC) – Section 307, 34, 498A

Citation: (2009) 1 ALD 96 : (2009) 1 ALT 481

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: M. Achutha Reddy, for the Appellant; K. Suresh Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

The matter is coming up for admission. It is stated by Sri K. Suresh Reddy that he had lodged caveat on behalf of the respondent.

2. Sri M. Achutha Reddy, learned Counsel representing the petitioners had taken this Court through the order made in I.A. No. 510 of 2006 in

O.S. No. 820 of 2006 on the file of the II Additional Junior Civil Judge, Kurnool and also the order made in C.M.A. No. 32 of 2006 on the file of

the Special Judge for S.C., ST. (POA) Act-cum-VI Additional District and Sessions Judge, Kurnool-cum-Chairman, Motor Accidents Claims

Tribunal, Kurnool, and would maintain that both the courts below erred in granting temporary injunction restraining the petitioners herein,

respondents in the said application from entering upon the matrimonial home. The learned Counsel also had explained the relationship between the

parties and would maintain that the first revision petitioner is none other than the daughter-in-law of the respondent and the counsel also would

maintain that merely because the relationship is strained on that ground restrained order of this nature cannot be made. The learned Counsel also

would maintain that the courts below failed to take note that O.S. No. 12 of 2005 on the file of the District Judge, Kurnool, is nothing but a

collusive one only with a view to defeat the rights of the first revision petitioner. The learned Counsel would emphasize that the effect of the

temporary injunction granted by the courts below would be depriving the first petitioner of her right to stay in the matrimonial home. The counsel

also pointed out to the relevant portions of the prima facie findings recorded by the court of first instance and also the appellate court.

3. On the contrary, Sri K. Suresh Reddy, learned Counsel representing the respondent would maintain that whether the compromise decree

between the co-parceners is collusive or not, may have to be decided at the appropriate stage. The learned Counsel also would further maintain

that in the light of the facts and circumstances since the property in question now belongs to the respondent, father-in-law of the first petitioner, the

first petitioner cannot claim any right whatsoever at present on the ground that the same is her matrimonial home. The learned Counsel also would

maintain that the husband of the first petitioner is residing at Bangalore and the first petitioner is also residing at Bangalore and in the facts and

circumstances of the case since both the courts came to the conclusion that the respondent-petitioner-plaintiff in I.A. No. 510 of 2006 in O.S. No.

820 of 2006 on the file of the II Additional Junior Civil Judge, Kurnool, is entitled for temporary injunction restraining from interfering with the

peaceful possession and enjoyment of the respondent herein i.e., petitioner over the plaint schedule property. The said order deserves no

disturbance at the hands of this Court as revisional court. The learned Counsel also placed reliance on the decision in S.R. Batra and Anr. v. Smt.

Taruna Batra 2007 (3) ALT (Cri.) 1 (SC) : 2007 (2) SGJ 3 : 2007 (3) ALT 181(DN SC) : AIR 2007 SC 1118.

4. Heard the counsel and perused the order of the court of first instance and also the order of the appellate court as well.

5. The civil revision petition is preferred by the revision petitioners aggrieved by the order made in C.M.A. No. 32 of 2006, dated 2.6.2008 on the

file of the Special Judge for SC ST (POA) Act-cum-VI Additional District and Sessions Judge, Kurnool-cum-Chairman, Motor Accidents Claims

Tribunal, Kurnool. The unsuccessful respondents in I.A. No. 510 of 2006 in O.S. No. 820 of 2006 on the file of the II Additional Junior Civil

Judge, Kurnool, being aggrieved of the granting of temporary injunction in favour of the respondent-petitioner-plaintiff preferred C.M.A. No. 32 of

2006 and the same was dismissed by the appellate court. Aggrieved by the same, the present civil revision petition had been preferred.

6. The averments made in the affidavit filed in support of the application praying for temporary injunction would go to show that the respondent

herein is the owner of the suit schedule house and he along with his elder son purchased the suit schedule site for consideration of Rs. 1,28,000/-

from one D.A. Chalma Reddy and thereafter constructed the suit schedule building and since the date of purchase he was in peaceful and

enjoyment over the suit schedule property and later on his second son by name T. Muralidhar Reddy filed a suit before Principal District Judge,

Kurnool seeking for partition of the joint family properties against him and his two brothers and the said suit was numbered as O.S. No. 12 of

2005 and the same was disposed of on 16.8.2005 by virtue of the orders in compromise petition in I.A. No. 1959 of 2005 which was filed by

both parties and as per the decree in the said suit, the suit schedule property was allotted to him along with another house situated in J.P. Nagar,

Bangalore, and the first petitioner is his daughter-in-law and the second petitioner is the father of the first petitioner and the marriage of the first

petitioner was celebrated with his son by name T. Udaykumar Reddy on 4.11.2001 and after the marriage the first petitioner and his son started

their marital life at Bangalore as his son was working at a Software Company at Bangalore and thereafter disputes arose between the first

petitioner and his son and the situation became worse in between the first petitioner and his son due to greedy and adamant nature of the first

petitioner and the second petitioner who is having criminal back ground. With the instigation of the second petitioner, the first petitioner preferred a

complaint against him including his younger son and others before J.P. Nagar Police Station, Bangalore and the police registered a case against

their entire family in Cr. No. 186 of 2004 u/s 498A read with Section 34 IPC and Sections 3 and 4 of Dowry Prohibition Act and later the same

was numbered as C.C. No. 22977 of 2005 and at present his family members are facing trial in the said case. The second petitioner is a criminal

and involved in several criminal cases and prior to the marriage he did not have knowledge about the petitioners family and as such accepted the

marriage proposal and celebrated his younger son's marriage with the first petitioner and since the date of marriage the petitioners planned to grab

entire family properties and on 19.5.2006 the petitioners along with their men went to Bangalore and made galata with his younger son and entered

into the house bearing 3-2B-3, which belongs to him and caused damage of the valuables and he presented a complaint before J.P. Nagar Police,

Bangalore. While so on 20.5.2006 at about 7.00 a.m., the petitioners came to Kurnool along with their henchmen and the first appellant with the

advise of second appellant went to IV Town police station and lodged a complaint u/s 498A, 307 r/w Section 34 IPC and Sections 3 and 4 of

Dowry Prohibition Act and they concealed about foisting similar case against his family members at Bangalore and they also influenced the police

and as such without proper enquiry police registered a case in Cr. No. 68 of 2006 u/s 498A, 307 r/w Section 34 IPC and Sections 3 and 4 of

Dowry Prohibition Act and later on at 8.00 p.m., the petitioners along with other henchmen went to his house and taking advantage of the absence

of other members of the family, without having any manner of right trespassed into the house and tried to dispossess him forcibly from the plaint

schedule house high handedly and he being aged about 74 years could not resist the high handed activities of the petitioners and their men and

fortunately the tenants and neighbours intervened and resisted the activities of the petitioners and the petitioners threatened him that they will come

again and dispossess him if he fails to register the plaint schedule house including house situated in Bangalore in favour of the first petitioner. Again

on 6.6.2006 the petitioners along with their henchmen went in a jeep and they forcibly entered into the plaint schedule house and dragged him out

of the house and also threw some valuable articles from the plaint schedule house and once again the neighbours and tenants rescued the

respondent. It is stated that without having any manner of right the appellants are trying to enter into the suit schedule house and disturb the

peaceful possession and trying to evict him forcibly from the suit schedule house with intent to grab his properties. It is further stated that the

respondent being an aged person and the second petitioner being a criminal involved in several criminal cases, the respondent is totally helpless and

taking the circumstances as advantage the petitioners tried and still trying to dispossess him from plaint schedule house forcibly. By stating so, the

respondent prayed the court to grant temporary injunction restraining the petitioners and their men from interfering with his peaceful possession and

enjoyment over the suit schedule building and also forcibly dispossessing him from the suit schedule building.

7. In the counter filed by the revision petitioners herein, they had taken specific stand that the respondent is not the owner of the plaint schedule

house and also further taken the stand that he had constructed the building is unsustainable. The revision petitioners also stated that the third son of

the respondent provided funds for erecting the said house and the revision petitioners denied the fact of the respondent being in enjoyment of the

said house. It is stated that the fact of institution of suit in O.S. No. 12 of 2005 on the file of the District Judge, Kurnool which ended in

compromise, falsifies the contention of the respondent that he is the owner of the property. It is stated that the allegations of the respondent reveals

that the suit schedule property was one among the properties of co-parcenary or the joint family and the joint family was composed of the

respondent and his three sons and the first petitioner being the legally wedded wife of the youngest son of the respondent is a member of joint

family property and the basic principle of law is that the members of the joint family have a legal and inalienable right to be in possession of plaint

schedule house. It is stated that the first petitioner was married to Udaykumar Reddy and she and her husband lived in a rented house in Bangalore

happily and the said fact is established by the fact that immediately she conceived and delivered a female child within a span of 400 days and the

birth of the female child was not to the liking of respondent and his wife because the first petitioner broke the record of the family by delivering a

female child as their family had no female child earlier. It is stated that the respondent and Udaykumar Reddy, received cash of Rs. 12 lakhs

besides bank deposits of Rs. 4 lakhs standing in the name of first petitioner, 75 tolas of gold, silver ware of equal value of gold besides wardrobe

full of Kanchi silk sarees and the first petitioner provided funds to her husband for the purchase of house site at Bangalore where house was

erected and the first petitioner and her husband lived in the said house. It is stated that availing house loan the said house was constructed and the

loan was repaid long back and the allegations that the first petitioner is greedy and of adamant nature are absolutely false and if she had any grain

of such wrong thoughts, she would have insisted on buying the plots in her name and she being an educated person did not display grace and did

not try to grab the properties of the respondent. It is stated that the respondent and his family members demanded for additional dowry and some

of their demands were complied by the second petitioner and in that context it became necessary for the first petitioner to report the matter to

police and on the complaint given by her C.C. No. 22977/ 2005 stood pending on the file of Criminal Court, Bangalore. It is further stated that in

pursuance of the police complaint, the police authorities convened two sittings of counseling between the first petitioner and her husband and the

first petitioner could see that her husband realized the wrong done by him towards her and they lived happily for some time but the respondent and

his family members did not leave them and finally they succeeded in separating the first petitioner from her husband and her husband Udaykumar

Reddy did not turn up to the house which necessitated her to proceed to her parents house at Tadipathri and she handed over the keys of

Bangalore house in the police station. It is further stated that the respondent and the members of his family planned to screen of the family

properties and the property of Udaykumar Reddy and the first respondent by filing a collusive and fraudulent suit for partition in O.S. No.

12/2005, used the Court proceedings to draw money from the second petitioner and when that demand was complied partly the suit was got

dismissed for default on 23.6.2005 and when the balance of demand was not complied with, the respondent and his family members played fraud

on the first petitioner and appeared to have got the default order set aside and shortly thereafter they managed a decree on 16.8.2005. It is further

stated that an allotment does not confer the title to the respondent and he did not apply for passing of final decree and no decree is engrossed on

non-judicial stamp and if the certified copy of the decree is treated as a title deed, the respondent has to pay stamp duty and penalty therein and it

is transparent that the respondent has come to the court with unclean hands and the house at Bangalore came into the possession of the first

appellant and she was put in possession of the said house by the police on 19.5.2006. Later the first petitioner filed a complaint on 20.5.2006 with

IV Town Police Station, Kurnool and in the light of general diary entry on the same day, the Superintendent of Police held counseling and he

advised Udaykumar Reddy to live with the first petitioner at Bangalore and consequently both of them went to Bangalore and resided in a rented

house and when they were living thus, the respondent and his wife went to Bangalore and took away Udaykumar Reddy and subsequently he went

to the rented house and asked her to go away. It is stated that the respondent and his wife are adamant and since Udaykumar Reddy had left, it

became necessary to the first petitioner to trace him at Kurnool and she went to Kurnool on 20.5.2006 and the respondent and his family

members did not allow her to stay in the house and drove her out and as such she sought for the assistance of police. The petitioners denied the

allegations of the petitioner-respondent herein that they without having any manner of right trespassed into the suit schedule house and tried to

dispossess the respondent forcibly and high-handedly. It is stated that the first petitioner has got every right to stay in the marital house even in the

absence of her husband. It is stated that the suit schedule house is a house in which all the family members have a right in law to occupy and make

use of it and the suit filed by the respondent is devoid of merits and in the context of marital status of the first petitioner being the daughter in law of

the respondent she has inalienable right to join the members of the family in the suit house and as such there is no prima facie case in favour of the

petitioner and the balance of convenience is in the favour of the first petitioner as such the three mandatory requirements of law in Order 39, Rules

1 and 2 C.P.C. are unavailable to the respondent. By stating so, the revision petitioners requested the trial court to direct the respondent to pay

sum of Rs. 50,000/- for obtaining advantageous ex parte order behind the back of petitioners on false and frivolous grounds and also prayed the

court to dismiss the petition with costs.

8. The appellate court in the aforesaid C.M.A. No. 32 of 2006 at para 9 formulated the points for consideration as under:

1. Whether there are any tenable grounds to grant temporary injunction restraining the appellants herein and their men from interfering with the

peaceful possession and enjoyment of the suit schedule property and from being dispossessed?

2. Whether the trial court failed to appreciate the facts of the case brought on record and in application of established principles of law?

9. The appellate court further recorded reasons commencing from paras 10 to 23 and came to the conclusion that to protect the rights of parties

granting temporary injunction is inevitable. Further the appellate court recorded reasons at paras 24 to 30 while answering point No. 2 and

ultimately came to the conclusion that the appeal being devoid of merit and the same is liable to be dismissed and accordingly the same had been

dismissed without costs. Aggrieved by the same the present civil revision petition had been preferred.

10. The respective stands taken by the parties in the affidavit filed in support of the application and also in the counter had already been referred

to. Several of the facts appear to be not in serious controversy inclusive of the relationship between the parties. There appears to be some strained

relationship between the parties. The husband of the first revision petitioner is residing at Bangalore. The father-in-law of the first revision petitioner

is the respondent. The fact that a compromise decree had been brought in O.S. No. 12 of 2005 aforesaid also is not in serious controversy. The

husband of the first revision petitioner is a Software engineer. The record also shows that a case was registered in crime No. 186 of 2004 u/s

498A read with Section 34 IPC and Sections 3 and 4 of Dowry Prohibition Act and the same was numbered as calendar case. Several other facts

and events also had been narrated. Be that as it may, the fact that the relationship between the parties are seriously strained. This is not in serious

controversy. It is no doubt true that the compromise decree made in O.S. No. 12 of 2005 is attacked as a collusive one. It is needless to say that

this may have to be gone into at the appropriate stage.

11. Reliance was placed on S.R. Batra and Anr. v. Smt. Taruna Batra (supra) wherein the Apex Court while dealing with matrimonial home in the

context of provisions of Protection of Women from Domestic Violence Act (43 of 2005) observed at paras 12, 16, 23 and 25 as under:

With respect, we are unable to agree with the view taken by the High Court.

There is no such law in India, like the British Matrimonial Homes Act, 1967 and in any case, the rights which may be available under any law can

only be as against the husband and not against the father-in-law or mother-in-law.

Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a house-hold where the person

aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in

question in the past, hence the said property is her shared household.

If the aforesaid submissions is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a

shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father,

husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the

learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shares households and the wife can well insist in

living in the all these houses of her husband's relatives merely because she had stayed wither husband for some time in those houses in the past.

Such a view would lead to chaos and would be absurd.

12. This Court had given anxious consideration to the reasons which had been recorded by the court of first instance and also the appellate court.

Inasmuch as the respondent-petitioner-plaintiff, father-in-law of the first revision petitioner is claiming ownership relating to the plaint schedule

property and whether the decree is collusive or not, may have to be gone into at the time of disposal of the suit. This Court is of the considered

opinion, prima facie, the findings recorded by the court of first instance and also the appellate court while granting temporary injunction cannot be

found fault. However, it is needless to say that these are only prima facie findings recorded for disposal of the application for temporary injunction.

It is needless to say that the suit may have to be disposed of not being influenced by any of the observations made in these orders since these

orders are being made while deciding the interlocutory application praying for the relief of temporary injunction under Order 39 , Rules 1 and 2 of

the Code of Civil Procedure. Inasmuch as the suit itself is sufficiently an old one and since it is stated that issues also had been settled and the same

is ripe for trial, let the II Additional Junior Civil Judge, Kurnool dispose of the suit itself within a period of six months from the date of receipt of a

copy of this order.

13. Subject to the above observation, the civil revision petition shall stand dismissed at the stage of admission. No order as to costs.