**(2008) 07 AP CK 0009**

**Andhra Pradesh High Court**

**Case No:** Civil Revision Petition No. 1550 of 2008

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| Smt. Bhukya Aruna | | APPELLANT |
| | Vs | |
| ARKS Cold Storage (P) Limited | | RESPONDENT |

**Date of Decision:** July 2, 2008

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, 151
- Constitution of India, 1950 - Article 227

**Citation:** AIR 2008 AP 155 : (2008) 5 ALD 53 : (2008) 4 ALT 696 : (2008) 3 APLJ 77

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

**Bench:** Single Bench

**Advocate:** Prakash Reddy, for the Appellant; Malla Reddy, for the Respondent

**Final Decision:** Allowed

**Judgement**

P.S. Narayana, J.
While admitting the civil revision petition this Court in C.R.P.M.P.No.2041 of 2008 directed both the parties to maintain status quo as on the said date till further orders. Respondent in the civil revision petition filed C.R.P.M.P.No.2914 of 2008 to vacate the interim order.

2. Though the matter is coming up at interlocutory stage, both the senior counsel Sri Prakash Reddy and Sri Malla Reddy representing the parties made a request for final disposal of the civil revision petition itself. Hence, the civil revision petition was finally heard and being disposed of by this Court .

3. Sri Prakash Reddy, learned Counsel representing the revision petitioner would maintain that here is a case where the court of first instance, in the light of Exs.A-1 to A-3, came to the conclusion that the plaintiff made out a prima facie case and balance of

convenience is in favour of the plaintiff and granted interim relief. The learned senior counsel also would maintain that since the respondent-defendant filed only xerox copies inadmissible in evidence, the same were not marked and inasmuch as no acceptable documentary evidence as such had been placed by the respondent before the court of first instance, the said court recorded appropriate reasons and granted the relief. The learned senior counsel also had taken this Court through the findings recorded by the appellate court and would maintain that the appellate court without appreciating the respective stands taken by the parties in proper perspective reversed the same by allowing the appeal specifying certain reliefs. While further elaborating his submissions the learned senior counsel would maintain that this is a case where the revision petitioner-plaintiff has been claiming under a prior sale deed of a specified extent and the respondent-defendant has been claiming a larger extent, inclusive of this extent, by virtue of a subsequent sale deed. The learned senior counsel also would point out that the origin of sale deed is not in serious dispute. Further, the senior counsel pointed out that the court of first instance though referred to Exs.A-1 and A-2, these documents were not shown by way of appendix of evidence and it may be that these exhibits had been marked by the court of first instance. The learned senior counsel also would maintain that here is a case where there is some dispute relating to the identity and the location of the property and, hence, in fitness of things it would be appropriate to appoint a commissioner for the purpose of local investigation, so that the very question in controversy can be conveniently resolved in the light of the respective stands taken by the parties.

4. On the contrary, Sri Malla Reddy learned senior counsel representing respondent would maintain that the very pleading had been drafted in a reckless and negligent way and several serious allegations had been made as against the defendant. The learned senior counsel also pointed out that though the plot had been referred to, there was no approval at all. The very fact that one of the parties made a report to police even in 2000 specifying encroachment would go to show that this litigation is nothing but blackmailing practice. If at all, the plaintiff is having any remedy, it may be as against the vendors and not against this respondent. The learned senior counsel also referred to Order VII Rule 11 of the CPC and would maintain that there is no cause of action at all. The learned senior counsel placed strong reliance on several decisions to substantiate his submissions. The learned senior counsel also pointed out to several documents which had been placed before this Court and would maintain that the observation made by the court of first instance that no documents had been filed cannot be sustained and this reasoning had been adopted only for the reason that xerox copies had been produced. The learned senior counsel pointed out to the permissions obtained and several of the proceedings placed before this Court and would maintain that there is no prima facie case or balance of convenience in favour of the plaintiff and, hence, no interim relief as such can be granted during the pendency of the suit. Even otherwise a suit for mere injunction itself cannot be maintained, may be the remedy is by way of relief of declaration of title and possession, if the plaintiff is so advised. Further, the learned senior counsel, with all

emphasis, would maintain that in the event of the plaintiff being successful, the defendant is prepared to demolish that portion which may be ultimately recorded to be that of the plaintiff by the court. The learned senior counsel also made certain submissions relating to the scope and ambit of Article 227 of the Constitution of India and when the interference is permissible.

5. Heard the counsel, perused the records.

6. Reliance was placed on the under noted decisions:

1. State of A.P. and Others Vs. Mohd. Jalaluddin Akbar @ Mohd. Jalaluddin Ali Khan and Others,

2. Mohd. Abdul Samad @ Arif Vs. Mirza Basheer Baig and Others,

3. Kathala Yellaiah and others Vs. Kathala Chandraiah,

4. S. Jafarvali v. B. Pedda Siddaiah and Ors. 2003 (6) ALD (NOC) 51

5. Chennamsetty Rama Murthy Vs. Gattu Venkateswarlu and Another,

6. Merangani Rama Swami and Co. and another Vs. Srinivasa Gunny Trading Company, Bhimavaram,

7. The copies of Exs.A-1 to A-3 relied upon by the plaintiff before the court of first instance also had been placed before this Court . Apart from the certified copy of judgment and decree, a copy of the plaint filed by the plaintiff in O.S.No.1769 of 2004, copy of the petition filed under Order XXXIX Rules 1 & 2 in I.A.No.5040 of 2004, copy of the counter filed by the appellant, copy of the written statement filed by the appellant. Further, xerox copies of under noted documents also had been placed before this Court .

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| 1. | Dt.21.8.1995 | : | Copy of the sale deed pertains to appellant firm. |
| 2. | Dt.01.11.1996 | : | Copy of memo issued by HUDA for change of land in S Village from residential to industrial. |
| 3. | Dt.12.12.1996 | : | Copy of the letter addressed by HUDA |
| 4. | Dt. 24.5.1997 | : | Copy of building permission granted by HUDA. |
| 5. | Dt. 24.02.1997 | : | Copy of G.O. issued for conversion of residential l |
| 6. | Dt. 14.9.1995 | : | Copy of provisional registration issued by the Depa |
| 7. | 11.7.1997 | : | Copy of construction permission issued by the Gram |
| 8. | Dt. 14.12.1998 | : | Copy of APSEB permission for supply of electricity. |
| 9. | Dt.29.7.1998 | : | Copy of pattadar pass book issued by MRO. |
| 10. | Dt. 01.10.2005 | : | Encumbrance certificate |
| 11. | 1997-98 | : | Pahani issued by MRO, Korremel village pertains to of appellant firm. |
| 12. | 1998-99 | : | Pahani issued by MRO Korremel village pertains to S |

of appellant firm.

13. 1999-2000 : Pahani issued by MRO Korremel village pertains to S
of appellant firm.

14. 2000-2001 : Pahani issued by MRO, Korrmel village pertains to S
of appellant firm.

8. The revision petitioner filed I.A.No.5040 of 2004 in O.S.No.1769 of 2004 on the file of the Principal Junior Civil Judge, R.R. District at L.B. Nagar, Hyderabad, under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, praying for temporary injunction restraining the respondent company and its officials in any way entering into the petition schedule property and from interfering with the peaceful possession and enjoyment of the petitioner.

9. It is the case of the petitioner that petitioner is the absolute owner and possessor of the house plot admeasuring 300 square yards and Plot No. 39 in S.No.795, Korremul village, Ghatkesar Mandal, Rangareddy District, by virtue of registered sale deed bearing No. 239/95, dated 07.6.1995. She claims to have purchased the schedule plot from the vendor by ascertaining title and possession thereon. Several other facts had been narrated how the company made attempts to encroach upon the plaint schedule property unlawfully and other aspects.

10. The Managing Director of the respondent company filed counter denying the said averments and had given specific boundaries to an extent of Ac.1-38 1/2 guntas in Sy.No.795 of Korremul village of Ghatkesar Mandal and claims right and title over the suit property by virtue of registered sale deed bearing No. 690, Book No. 1, dated 21.8.1995 and it was asserted that the said company has been in possession and enjoyment of the aforesaid land and the petition schedule property does not include in the said extent Ac.1-38 1/2 guntas. The petitioner filed a reply affidavit as well.

11. The learned Judge framed the following points for consideration: 1. Has the petitioner prima facie case?

2. Is the petitioner in possession and enjoyment of the schedule property?

3. Is petitioner entitled to ad-interim injunction as prayed for?

4. To what relief?

The learned Judge also recorded that during enquiry Exs.A-1 to A-3 were marked on behalf of the petitioner and no documents were marked on behalf of the respondent company. Further, the learned Judge recorded reasons at para 7 while answering point No. 1. Certain further reasons at para 8 while answering point No. 2 and at para 9 while answering point No. 3 and at para 10 while answering point No. 4 and allowed the application with costs.

12. It is no doubt true that Exs.A-1 and A-2 had been referred to in the body of the order and Ex.A-3 encumbrance certificate also had been referred to. But, though these documents were marked for the purpose of deciding an interlocutory application, there is no appendix appended to the said order.

13. The respondent as defendant being aggrieved of the same, carried the matter by way of C.M.A.No.180 of 2005 on the file of IV Additional District & Sessions Judge, Fast Track Court, Ranga Reddy District, and the appellate court at para 5 framed the following points for consideration.

1. Whether the petitioner is entitled for temporary injunction as prayed for?

2. What the result?

The appellate court referred to the under noted decisions

1. State of A.P. and Others Vs. Mohd. Jalaluddin Akbar @ Mohd. Jalaluddin Ali Khan and Others,

2. Shaik Ameer Johni Vs. Shaik John Ahmed, )

3. A. Vinayananda Reddy Vs. T. Gurunatha Reddy and Another,

4. Kathala Yellaiah and others Vs. Kathala Chandraiah,

5. Mohd. Abdul Samad @ Arif Vs. Mirza Basheer Baig and Others, recorded reasons at para 7 and ultimately allowed the appeal granting the under noted reliefs.

(i) The decree and Order dt.25.8.2005 in I.A.5040/04 in O.S.No.1769/04 on the file of Prl. Junior Civil Judge, R.R. District at L.B. Nagar is hereby set aside.

(ii) I.A.No.5040/04 in O.S.No.1769/04 is hereby dismissed;

(iii) Temporary injunction granted on 25.8.05 is hereby vacated;

(iv) In view of the facts and circumstances of the case, both parties are directed to bear their own costs throughout.

14. It may be appropriate to have a glance at certain observations made by the appellate court at this juncture.

During the course of arguments, the learned Counsel for appellant argued that before the trial court it filed xerox copies of the documents and the trial court did not mention about that fact and made an observation that the respondent did not file any documents. It is settled law that unless there is a cogent explanation, xerox copies are not admissible in evidence. When the documents filed by the appellant before the trial court are not

admissible in evidence and not marked, there is no other option to the trial court that the respondent not marked any documents. When document is not marked, there is no need to refer that fact in the judgment by the court. In my considered view, the argument raised by the counsel for appellant is not in accordance with law and has no force.

Aggrieved by the reversing order the present civil revision petition had been preferred.

15. As already specified supra, while admitting the civil revision petition, this Court granted an order of status quo. Several of the documents which had been placed before this Court by respondent as defendant had not been placed before the court of first instance. It appears that certain documents (xerox copies) had been produced before the court of first instance, but for the reasons best known those documents had not been considered at all. May be that on the ground that being the secondary evidence unless the conditions are satisfied such documents cannot be admitted in evidence. It is needless to say that while deciding an interlocutory application, even under the Civil Rules of Practice, the documents are to be marked for the purpose of deciding interlocutory application. It is one thing to say that no documents had been produced, but it is yet another thing to say that the xerox copies of the documents had been produced. Such documents cannot be considered except the original documents are produced or convincing reasons in accordance with law or otherwise put forth before the court. The relevant portion of the observations of the appellate court already had been specified supra. No doubt certain submissions were made by Sri Malla Reddy, learned senior counsel that even in the event of ultimate success of the plaintiff the defendant is prepared to remove such super structures which may be raised by the defendants on such portion.

16. In the light of the peculiar circumstances, this Court is satisfied that the orders made by both the court of first instance and also the appellate court cannot be sustained. The appellate court even in the absence of any acceptable documentary evidence on the part of the respondent had recorded such findings. Inasmuch as this Court made an order of status quo and in view of the fact that this Court is satisfied that the order of the court of first instance and also the order of the appellate court are not sustainable, both the orders are hereby set aside and the matter is remitted to the court of first instance for the purpose of giving opportunity to both the parties to file all the documents, apart from the documents which had been already marked, consider all such documents which may be placed by both the parties and record appropriate reasons on appreciation of such documents and decide the matter afresh in accordance with law. It is needless to say that the revisional court cannot consider the documents which are being produced before this Court and, hence, it would be desirable if all such documents are placed before the appropriate court. In view of the urgency pleaded, let the learned Principal Junior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, dispose of the application in accordance with law within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that till the application is disposed of in accordance with law as specified supra, the order of status quo made by this Court be operative.

17. Accordingly, the civil revision petition is hereby allowed to the extent indicated above. No order as to costs.