

(2014) 09 AP CK 0098

Andhra Pradesh High Court

Case No: C.R.P. No. 2950 of 2014

K. Vijaya Lakshmi

APPELLANT

Vs

G. Nageshwara Reddy

RESPONDENT

Date of Decision: Sept. 3, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

Citation: (2015) 1 ALD 465 : (2015) 3 ALT 476

Hon'ble Judges: B. Chandra Kumar, J

Bench: Single Bench

Advocate: C. Hanumantha Rayudu, Advocate for the Appellant

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.

This CRP is filed against the docket order dated 22.08.2014 passed in IA No. 1122 of 2014 in OS No. 361 of 2014 on the file of the Principal Junior Civil Judge, Kurnool.

2. The petitioner in this revision is the plaintiff in the suit. She filed the suit against the respondents herein for permanent injunction in respect of the suit schedule property i.e., the land admeasuring 561.11 sq. yards bearing plot No. 2 in Survey No. 920/1, situated at Kallur village and Mandal, Kurnool District, within Kurnool Municipal Corporation limits, 69th Ward with specific boundaries. As seen from the stamps of the Court below the said suit was filed on 23.06.2014. Along with that suit the petitioner herein filed IA No. 1122 of 2014 under Order 39 Rules 1 and 2 read with Section 151 CPC praying the Court to grant ad interim injunction restraining the respondents, their men etc., from interfering with her peaceful possession and enjoyment over the suit schedule property pending disposal of the suit. The petitioner in her affidavit specifically alleged that the defendants without having any right tried to dispossess her from the suit schedule property on 20.05.2014. It is also

her case that when the Government officials tried to interfere with her possession she filed WP No. 15041 of 2014 and obtained interim direction in WPMP No. 18639 of 2014 on 03.06.2014. It is submitted that the said writ petition is still pending. IA No. 1122 of 2014 was heard on 22.08.2014 and the learned Principal Junior Civil Judge, Kurnool, passed orders as follows.

3. Heard. Issue urgent notice to the respondents. Call on 23.09.2014.

4. When the suit was filed on 23.06.2014 it is not clear under what circumstances the matter was heard on 22.08.2014. Now this revision is filed challenging the order dated 22.08.2014 in ordering urgent notice to the respondents.

5. Learned counsel for the petitioner submitted that the lower Court ought to have considered the urgency in the matter and that there is threat of dispossession of the petitioner from the suit schedule property.

6. Order 39 Rule 1 CPC is as follows.

1. Cases in which temporary injunction may be granted.-Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

7. The above referred provision enables the Court to grant temporary injunction even without issuing notice to the respondents. The above provision has been made with an intention to preserve the property as it is. When any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or where the defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors or where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may grant a temporary injunction. Of course, the plaintiff has to establish prima facie case. It becomes the duty of the Courts to examine whether there is any urgency in the matter or not. The Courts should go through the averments made by the party in the supporting affidavit and also the pleadings and documents filed in support of the case of the plaintiff. When a prima

facie case is made out, the Courts must grant temporary injunction and see that the plaintiff is not dispossessed in the meanwhile. The urgency of passing of orders under Order 39 Rule 1 CPC should be kept in mind. Even where the Court is not inclined to grant temporary injunction or decides to issue urgent notice in that case also the Court should issue urgent notice and post the matter to a shortest date. The Court should examine what is the reasonable time required to serve the notice upon the respondents. Where the plaintiff undertakes to serve the notice within two or three days, the matter need not be adjourned to a longer date. It can be posted within four days or a week. When there is urgency in the matter the attitude of the Courts in posting the matter to a longer date, in fact defeat the purpose of Order 39 Rule 1 CPC. In the above circumstances, I am of the view that there is no need to issue notice to the respondents in this revision. The revision can be disposed of at the admission stage giving following directions to the lower Court.

8. The learned Principal Junior Civil Judge is directed to issue notice to the respondents or their counsel and advance the matter to any date within a period of seven (7) days from the date of receipt of a copy of this order and hear the matter within a period of seven (7) days thereafter and pass appropriate orders in accordance with law. However, in the meanwhile, both the parties are directed to main status quo obtaining as on today with regard to possession.

9. Accordingly, the CRP is disposed of. However, in the circumstances, no costs.

10. As a sequel, the miscellaneous petitions, if any, pending in this revision shall stand closed.