

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).23734/2004

(From the judgement and order dated 02/12/2003 in CMA No.746/2003 of the  
HIGH COURT OF A.P AT HYDERABAD)

PENUMALLI MALAKONDA REDDY & ANR.

Petitioner(s)

VERSUS

MOORA RAMAIAH & ANR.

Respondent(s)

(With appln(s) for c/delay in refiling SLP and prayer for interim relief and office  
report)

Date: 15/01/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. D.Rama Krishna Reddy, Adv

Mrs.D. Bharathi Reddy,Adv.

Mr.Ch.Leela Sarveswar, Adv.

For Respondent(s)

Mr.C.B.N.Babu, Adv

Mr.Bimal Roy Jad, Adv.

Mr. C.M.Angadi, Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The appeal is dismissed in terms of the signed order.

(Meenu Sethi)  
Court Master

(V.P.Tyagi)  
Asstt.Registrar

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 282 OF 2007  
(@ SLP(C) No.23734/2004)

Penumalli Malakonda Reddy & Anr. ...Appellants

Versus

Moora Ramaiah & Anr. ...Respondents

ORDER

Delay condoned.

Leave granted.

The respondents herein filed a Suit for specific performance of a contract. They claimed to be in possession of the suit property. An application for injunction was filed by the plaintiff-respondents, inter alia, for

restraining the defendant-appellants herein from interfering with their peaceful possession and enjoyment over the plaint schedule property.

Learned trial Judge in terms of his order dated 24.10.02 refused to pass an order of injunction, inter alia, on the premise that the plaintiff did not produce the agreement for sale which is sought to be specifically enforced stating:

" ..It is to be mainly considered as to whether the petitioner is entitled to the relief of temporary injunction pending disposal of the suit, without marking the suit agreement of sale, which is the basis for his claim. By virtue of Section 92 of the Indian Evidence Act when contents of a document are to be established in a Court of Law, the same can be done only by producing it before that court and adducing necessary evidence, but not otherwise. Therefore, without producing this document, the contents mentioned therein can not be considered at all. Further, it is observed in the order passed in I.A.No.15/2001 in O.S.No.9/2001 on the file of this Court dated 18.8.2001 that if the possession of the property was given to the petitioner subsequent to the execution of the agreement of sale, it should be deemed that the same was done by virtue of the same agreement of sale itself. Therefore, when the agreement of sale is not marked as an exhibit, the question of considering the delivery of the possession of the property to him also does not arise, by virtue of the same provisions of law....."

An appeal had been preferred thereagainst by the respondents. A Division Bench of the High Court while reversing the said findings opined as follows;

"In the background of the above-mentioned facts and the findings recorded by the trial Court, we are of the opinion that the Court below jumped to a hasty conclusion that the appellant herein is a trespasser. Whether he is a trespasser or not is a matter to be decided at the end of the trial of the suit on the evidence led in by the parties. Even if the appellant is found to be a trespasser, the settled position of law is that even trespasser in possession of the property could not be evicted except in accordance with the procedure established by law. By declining an injunction in a case like the present one where admittedly the appellant is in possession of the property and where already the respondents are found to be in possession of the property, it would only lead to a situation where the parties might resort to extra legal measures for settling the disputes..."

Mr. D.Rama Krishna Reddy, learned counsel appearing on behalf of the appellants would submit that the High Court

committed a manifest error in arriving at the said finding inasmuch as the respondents could not have been favoured with an order of injunction although it had failed to prove his prima-facie case. Ordinarily, we would have agreed with the submissions of the learned counsel but as has been noticed

hereinbefore, the respondents admittedly are in possession of the property. Possession as is well known having regard to Section 110 of the Indian Evidence Act must be presumed to have followed title. If the respondents were rank trespassers, it would have been expected of the appellants to file a suit or otherwise proceeded against them in accordance with law. In a case of this nature, we are of the opinion that the High Court cannot be said to have committed any illegality in passing an order of injunction so as to direct the parties to maintain Status-quo. We, therefore, do not find any error in the judgment of the High Court. However, keeping in view the facts and circumstances of this case, we direct the trial Judge to dispose of the matter as expeditiously as possible and preferably within six months from the date of communication of this order. The appeal is dismissed accordingly.

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..J.

[ S.B. SINHA ]

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J.

[MARKANDEY KATJU]

New Delhi,

JANUARY 15, 2007