

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**C.M.A.NO.663 OF 2015**

**JUDGMENT:**

This appeal is filed by the appellants against the order, dated 26.08.2015 passed in I.A.No.1180 of 2015 in O.S.No.265 of 2015 by the IV Additional District Judge, Guntur, wherein the court below granted temporary injunction in favour of respondent Nos.1 and 2 restraining the appellants from making any construction or in any way altering the nature of plaint schedule property, pending disposal of the suit.

The parties herein are referred to as they are arrayed in the suit.

The facts of the case are that petitioners 1 and 2 and respondent Nos.1 to 13 are the descendants of one Pattamsetty Ramaiah @ Ramulu, who is the grand father of petitioners 1 and 2. Item Nos.1 and 2 of plaint schedule properties are ancestral properties of both the parties to the petition and all of them constitute Hindu Joint Family and as no partition took place, they are in joint and constructive possession of joint family properties. The 4<sup>th</sup> respondent is looking after the plaint schedule properties and that the

respondent Nos.1 and 2 issued a notice to the appellants and other respondents on 28.11.2014 for partition of the plaint schedule properties. The 4<sup>th</sup> respondent issued a reply notice with false averments and hence the petitioners filed a suit for partition of suit schedule properties and temporary injunction is sought, as the respondents are proceeding with the construction work without there being any partition.

The learned counsel for the appellants contends that the respondent Nos.1 and 2 admitted about prior partition of the suit schedule properties and Ex.R-1 to R-3 sale deeds dt.08.09.2003 also show that the respondents have sold their share in Item No.1 of the suit schedule property. The court below without considering this aspect, granted temporary injunction in favour of respondent Nos.1 and 2.

On the other hand, the learned counsel for the respondent Nos.1 and 2 submits that this aspect has to be gone into before the trial court, as there is balance of convenience or prima facie case in favour of the appellants, injunction was granted. The learned counsel also submits that while granting temporary injunction, there is no discussion in the order of the court below with regard to Exs.R-1 to R-3, as they do not pertain to the plaint schedule property.

Since the pleadings are complete and all the documents are filed, only on the ground of non-consideration of Exs.R-1 to R-3 by the court below while passing the impugned order the matter is to be remanded back for considering the same.

Both the learned counsel agreed for the same course.

In view of above facts and circumstances, the impugned order passed in I.A.No.1180 of 2015 in O.S.No.265 of 2015, dt.26.08.2015 by the IV Additional District Judge, Guntur is set aside and the matter is remitted back to the court below, directing it to dispose of the matter as expeditiously as possible. It is also observed that this Court while granting interim orders in C.M.A.MP.No.1426 of 2015, dt.22.09.2015 asked the appellants to give an un-conditional undertaking that they will not claim any equities over the plaint schedule property, in case of respondent Nos.1 and 2 succeed in the suit for partition. The same undertaking shall be in force till I.A.No.1180 of 2015 in O.S.No.265 of 2015 is disposed of.

The appeal is accordingly disposed of. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

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A.RAJASHEKER REDDY, J

Dt.17.12.2015

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