

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.503 of 2015

JUDGMENT:

This is an appeal by the unsuccessful petitioner/plaintiff under Order XLIII Rule (1) of the Code of Civil Procedure, 1908 ('the Code', for short) assailing the orders dated 01.05.2015 of the learned XVI Additional District Judge, Ranga Reddy District at Malkajgiri passed in IA.No.74 of 2015 in OS.No.35 of 2015 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code to grant ad interim injunction restraining the respondent/defendant, his henchmen, agents etcetera from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property.

2. I have heard the submissions of the learned counsel for the appellant/petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The basic facts necessary for consideration in this appeal, in brief, are as follows:

3.1 The case of the plaintiff is as follows:- 'Originally his mother-D.Yamuna Bai had purchased an extent of 520 Square yards in Plot No.39/A situate in Sy.No.221 at Dwarakapuri Housing Colony of Quthbullapur village under a registered sale deed *vide* document no.1906 of 1980 and had enjoyed the said property during her life time. After the death of his mother, the plaintiff had inherited the said property and had thus become the absolute owner of the same. Subsequently, the plaintiff had sold an extent of 131 Square yards on the Northern side of the Plot No.39/A to one Smt.S.Kalavathi under a registered sale deed dated 24.02.1995 and had also delivered possession to her. In the Eastern side of the said plot, one Uma had encroached an extent

of 139 Square yards and had constructed a house No.6-150/1 and is in illegal possession of the said extent. As such, after excluding the said extents of 131 & 139 Square yards, the plaintiff is now in possession and enjoyment of the remaining land admeasuring 250 Square yards in Plot No.39/A in Sy.No.221 more fully described in the schedule annexed to the plaint. The wife of the plaintiff by name Chitra Lekha is the absolute owner of neighbouring plot nos.38/A and 39 admeasuring 663.88 Square yards having purchased the same under a registered sale deed dated 06.05.1980. Subsequently, his wife through her G.P.A Holder- K. Krishna Murthy had sold an extent of 144 Square yards in favour of K. Krishna Kumari under a registered sale deed dated 17.01.1992 and delivered possession of the same. On 03.11.2014 the plaintiff came to know that the defendant had created a registered sale deed dated 06.02.2014 in respect of plot No.38/A in his favour said to have been executed by one Budda Lingam Goud alleged to be the GPA holder of the plaintiff's wife. In-fact his wife had died intestate on 06.03.2010. The defendant being the grand son of Budda Lingam Goud got the information about a GPA allegedly executed by the plaintiff's wife-Chitra Lekha in favour of his grand father Budda Lingam Goud. The alleged GPA in favour of the said Budda Lingam Goud which relates to plot No.38/A in Sy.No.221, Quthbullapur with specific boundaries is a created document with fake persons. Even assuming that it is correct and genuine, the rights of the GPA holder stood extinguished by virtue of death of the executor i.e., N. Chitra Lekha. Moreover, the boundaries in the GPA and the boundaries in the sale deed executed by the alleged GPA holder in favour of the defendant do not tally. Further, plot No.38/A was already sold by N. Chitra Lekha in favour of Krishna Kumari under registered sale deed dated 17.01.1992 during her life time. The alleged GPA holder Budda Lingam Goud absolutely had no manner of authority to sell the property and thus the sale deed dated 06.02.2014 is a void and invalid document. As the defendant was trying to disturb the plaintiff's peaceful possession and enjoyment over the plaint schedule property, the plaintiff had got issued a legal notice to the defendant on 06.12.2014. The same was acknowledged by the defendant. While so, on 25.01.2015 the defendant had again come to the suit land and had tried to

interfere with the plaintiff's peaceful possession and enjoyment over the suit land. Since the defendant is bent upon interfering with the plaintiff's possession by denying the title on the basis of the said forged and fabricated sale deed, the plaintiff is constrained to file the suit for perpetual injunction and to declare the registered sale deed dated 06.02.2014 as null and void and the application for temporary injunction.

3.2 On the other hand, the respondent had filed a counter resisting the application for temporary injunction by denying the averments in the affidavit filed in support of the petition and had *inter alia* contended as follows: - 'The respondent is the absolute owner and is in physical possession of the plot bearing No.38/A admeasuring 201 Square yards in Sy.No.221 situate at Chintal, Quthbullapur Mandal having purchased the same under a registered sale deed. There is no such plot as plot no.39/A in the locality as claimed by the plaintiff in the plaint schedule property and the plaintiff is neither in possession of the plaint schedule property nor has any right, title over the same. The plaintiff has approached the Court with false and concocted story with a view to grab the valuable plot No.38/A admeasuring 201 Square yards belonging to the defendant. The plaintiff, taking advantage of the death of the grand father of the defendant, is trying to create clouds over the title and litigation over the time barred issues to extract monies from this defendant by filing this type of suits. This defendant suffers loss and damage if the Court grants any orders pursuant to the illegal attempts of the plaintiff through this suit. The plaintiff has no *prima facie* case and the balance of convenience is not in his favour.' It appears that the defendant had also filed two photographs along with CD showing possession over the plot No.38/A.

3.3 During the course of enquiry before the trial Court, no oral and documentary evidence was adduced on either side.

3.4 On merits, the trial Court had dismissed the petition. Therefore, the aggrieved plaintiff is before this Court.

4. At the time of hearing, the learned counsel for the plaintiff while making submissions in line with the pleadings had further contended as follows:

Though the trial Court had appreciated the evidence on record and had come to clear and tangible conclusions in favour of the plaintiff, but, surprisingly, had dismissed the injunction petition without assigning any reasons. The order of the trial Court is perverse and not based on rational judicious disposition. The trial Court acted with undue haste in dismissing the injunction petition and in passing a cryptic order in favour of the defendant.

The trial Court ought to have appreciated that mere filing of photographs by the defendant showing temporary possession does not prove the right of the defendant and disprove the ownership of the plaintiff. Taking advantage of the order in favour of the defendant, the defendant will indulge in constructing permanent structures in the suit schedule property. The trial Court had erred in not marking the documents filed on behalf of the plaintiff. The trial Court did not even make a whisper about the documents filed along with written arguments. The plaintiff had established the cardinal principles namely *prima facie* case, balance of convenience in his favour and irreparable loss that would ensue if no injunction is granted. Therefore, the order impugned is liable to be set aside.

4.1 The learned counsel for the respondent/defendant while supporting the orders of the court below had contended that even though the documents are not exhibited, the order passed is a reasoned order and is sustainable under facts and in law and that the court below has also considered the photographs filed by the defendant showing possession of the defendant and that therefore, there is no error calling for interference with the orders of the court below.

5. I have noted the submissions. No documents were exhibited on either side at the time of hearing of the interlocutory application before the trial Court. Therefore, the contents of the documents filed by the parties are not adverted to and not considered by the Court below. However, a reference was made to some photographs. When an Interlocutory Application is filed for a temporary injunction in regard to immovable property, the Court has to necessarily look into the documents of both the parties and examine the contents thereof to find out as to whether the pleadings find support from the

recitals in the respective documents. No just decision as regards the property in dispute can be made without looking into the documentary evidence that may be relied upon by both the parties. In the light of the contentions urged by both the parties, it is always necessary to refer to and carefully examine the recitals in the documents before coming to a just decision in the matter. Unless the documents filed by both the parties are exhibited, the documents will not be sent to this Court from the trial Court along with the lower Court records. Unless the documents are duly exhibited and are before this Court, it is neither possible nor is just and proper to appreciate the rival contentions.

The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the petition for temporary injunction on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. It is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. This Court in a decision in **A.P. Minerals Development Corporation Limited Hyderabad v. M/s.Trimex Minerals Pvt.Ltd.**,^[1] and another decision in **Bhopal Reddy and another v. K.Lakshmi Bhai and another**^[2] held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own. In these circumstances, it is just and proper to allow the appeal and remand the matter to the trial Court for disposal of the IA on merits, after following the procedure established by law, which was adverted to supra.

6. For the reasons assigned, the Civil Miscellaneous Appeal is allowed

and the order and the decretal order of the trial Court in I.A.No.74 of 2015 are set aside and the said IA is remitted to the trial Court with a direction to give an opportunity to both the parties to exhibit their respective documents and then dispose of the said application afresh, on merits and in accordance with the procedure established by law. The trial court is directed to dispose of the interlocutory application as directed within one month from the date of receipt of a copy of this judgment.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

29th July, 2015
Vjl

[\[1\]](#) 1998(1) ALT 182

[\[2\]](#) 1998(1) ALD 770