

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.521 of 2015

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JUDGMENT:

This Civil Miscellaneous Appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('the Code', for short) by the unsuccessful petitioner/ plaintiff is directed against the order dated 29.05.2015 of the learned VI Additional District Judge, Kakinada (Vacation Civil Judge), at Rajahmundry of East Godavari District passed in I.A.no.71 of 2015 in O.S.No.16 of 2015 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code requesting to grant temporary injunction restraining the defendants/respondents from interfering with the plaintiff's peaceful possession and enjoyment of an extent of Ac.0.46 cents in R.S.No.133/2 in item no.1 and Ac.0.40 cents in R.S.No.249/1 in item no.2 i.e., total Ac.0.86 cents of property situated at I.Polavaram Mandal, Patha Injaram village, more fully described in the schedule annexed to the plaint.

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

3. Now, the points for determination in this appeal are:

- 1 . Whether the plaintiff had made out valid and sufficient grounds and had satisfied the cardinal principles for grant of temporary injunction in respect of the plaint schedule property against the defendants as prayed for?**
- 2. Whether the impugned order is unsustainable under facts and in law and is liable to be set aside as contended by the plaintiff?**

3. To what relief?

4. POINTS:

4.1 The case of the plaintiff, in brief, is this:

The plaintiff is the owner and possessor of the plaint schedule property having got the same as per the bequest under a registered Will dated 04.01.2014 executed in a sound and disposing state of mind by Byrisetti Subbamma @ Subbayamma W/o Veeranna. In the said Will, her source of title and possession to the property were traced. She had got the property in an extent of Ac.0.46 cents in R.S.No.133/2 of Patha Injaram village under registered sale deed dated 10.03.1959 executed by Yelamanchili Veeraswamy; she had got another extent of Ac.0.40 cents in R.S.No.249/1 of the same village under registered sale deed dated 19.02.1965 executed by Illa Pullamma and others. The registration extracts of the said sale deeds and the original registered Will deed executed by Subbayamma in favour of the plaintiff and the receipts showing payment of land revenue by the plaintiff even during the life time of Subbayamma establish a *prima facie* case of lawful possession in favour of the plaintiff. The mother of the plaintiff by name Seethamma is the sister of the said Byrisetti Subbamma @ Subbayamma. Subbamma and her husband had no issues and they had fostered the plaintiff and had performed her marriage. The plaintiff and her husband had attended to the needs of Veeranna and Subbamma during their life times. In the said circumstances, Subbamma having executed a Will aforementioned had bequeathed the plaint schedule property to the plaintiff. On the death of Subbamma recently and on completion of her annual ceremony, the plaintiff wanted to take steps for mutation of the property in her name in the revenue records to enable her to secure pattadar passbook and title deed book in respect of the plaint schedule property. Her requests in that regard are still pending before the revenue authorities. The defendants are the distant relatives of Subbamma @ Subbayamma with similar surname of Byrisetti. Taking advantage of the said situation, the defendants had demanded the plaintiff to handover possession of the schedule property by executing proper conveyance deed by admitting them as the successors of Subbamma. The plaintiff had refused to oblige

the defendants as she had succeeded to the plaint schedule property under the registered Will dated 04.01.2014. Thus, there were differences between the plaintiff and the defendants and therefore, the defendants are threatening to dispossess the plaintiff and are also threatening to interfere with her possession and enjoyment of the plaint schedule property with a dishonest and fraudulent intention to make the plaintiff to somehow or other part with the possession of the property in their favour. The defendants bore grudge against the plaintiff for not obliging them and they had hatched a plan and made a vain attempt two days prior to the suit to take forcible possession of the plaint schedule property. But the said attempts were resisted by the plaintiff. Hence, the suit for perpetual injunction and the present interlocutory application are filed in the circumstances stated in the application.

4.2 The averments in the counter affidavit of the 1st respondent and the case of the respondents, in brief, are as under:

The material allegations in the plaint and the affidavit filed in support of the petition are false. The Will dated 04.01.2014 being relied upon by the plaintiff is not genuine. Such a Will was not executed by Subbayamma. The plaintiff was fostered by Subbayamma and her husband and that they had looked after her welfare and also performed her marriage with Bonthu Veeramsetti is false. The averment that the plaintiff had attended to the needs of Subbayamma and her husband during their life times is false. The plaint allegations are only invented for the purpose of this suit. The plaintiff had never enjoyed the plaint schedule property as alleged in the plaint. Late Subbayamma had no necessity to execute such a Will as alleged by the plaintiff. The plaintiff was brought up by her parents and her parents performed her marriage. On account of repressive behaviour of her husband Veeramsetti towards her, the plaintiff was subjected to lot of suppression and she was not of sound mental health. She is keeping aloof. She keeps on talking to herself without feeling the presence of others. She is always dull and dumb without any interaction even with her own family members. The husband of the plaintiff is running this litigation for unlawful gain. Since a long time, he had an idea to grab the schedule properties. The plaintiff has no knowledge about the plaint schedule property or its survey numbers. The plaintiff has no right in the plaint schedule properties. Annual ceremony of Subbamma was performed by the defendants during the month of

December 2014 itself. The plaintiff is the mother-in-law of the 1st defendant as her own daughter was given in marriage to this defendant. One Byrisetti Adinarayana, who is the father of the defendants, is the son of late Subbaamma @ Subbayamma and Veeranna. Thus, they are the paternal grand parents of all the defendants herein. Late Veeranna used to work as an employee at Port in Bombay; and he had purchased the schedule properties in the name of Subamma @ Subbayamma. Veeranna used to stay in Bombay for employment and his wife and son used to manage the schedule properties. Having returned to the village, Veeranna had spent his last days with his wife at Yadurulanka village. Late Adinarayana with his family had migrated to Uppada Kothapalli to eke out the livelihood. Veeranna had predeceased his wife Subbamma @ Subbayamma. Late Adinarayana while attending to management of the family and the schedule properties had also attended to the well being of his mother Subbamma. Veeranna's family also possessed house property in the name of Subbamma @ Subbayamma. The said house was settled on the respondents/ defendants 1 and 2 after reserving life interest in her favour. After her death, all the family properties were taken possession by the defendants and the defendants are in peaceful possession and enjoyment of the same. This 1st defendant is the eldest grandson of Subbamma @ Subbayamma. Wife of this defendant is none other than the daughter of Anasuya, the plaintiff. Subbamma used to stay with this defendant. The 1st defendant and his wife served Subbamma for seven months when her right foot was fractured. When Subbamma had expressed her wish to spend her last days at her own house, she was taken to that place. She had died intestate on 04.02.2014. The plaintiff had earlier filed a suit on O.S.No.7 of 2015 on the file of the learned Junior Civil Judge, Mummidivaram and had not pressed the same on 07.04.2015 having filed a memo. The plaintiff had brought the suit without prosecuting the earlier suit and had suppressed the fact that she had earlier filed a suit. She is not entitled to any relief much less the equitable relief of injunction. Hence, the petition may be dismissed.

4.3 At the time of enquiry, no oral evidence was adduced. Exhibits P1 to P10 were marked on the side of the plaintiff and exhibits R1 to R7 were marked on the side of the defendants.

4.4 The learned counsel for the plaintiff/appellant while reiterating her pleaded case had contended as follows: 'The plaintiff had filed her registered Will deed and also the copies of the title deeds of Subbamma in respect of the plaint schedule property to establish her *prima facie* case. She could not file any revenue records showing her name as possessor of the property as mutation of property in her name has not yet taken place and her requests for mutation are pending consideration before the revenue authorities concerned. Further, exhibit P5, the copy of No.3 Adangal shows that the property was in the name of Subbamma. The same was issued on 12.01.2015. Therefore, till May 2015, the name of Subbamma had continued in the revenue records as the owner of the property. The Court below was in error in holding that the plaintiff has come to Court with unclean hands as she did not mention about the earlier suit in her pleadings. The plaintiff herself filed exhibits P7 to P10, which are documents pertaining to the earlier suit. Therefore, it cannot be said that there is suppression of facts on the part of the plaintiff. The Court below ought to have seen that possession follows title and ought not to have observed that no evidence was produced by the plaintiff that she came into possession of the plaint schedule property after the death of Subbamma. The allegation about the mental condition of the plaintiff is false. On the ground of the imperfect mental condition of the plaintiff, the suit is not maintainable is a false allegation raised by the defendants. They did not file any documents in support of their said contentions. The Court below ought to have properly considered the third party affidavits and the documentary evidence. The Court below ought to have seen that the plaintiff is the fostered daughter of Subbamma and that she had looked after the welfare and well-being of Subbamma and her husband during her last days and that out of love and affection, Subbamma had executed the registered Will and had bequeathed her property in favour of the plaintiff and that after the death of Subbamma, the plaintiff came into possession and was in peaceful possession and enjoyment of the same. The Court below ought to have seen that the plaintiff had lodged a report with the police, but, the police did not take any action and that therefore, she had also reported the matter to the Superintendent of Police and that even that report dated 06.02.2015 was not acted upon and that therefore, the plaintiff was constrained to file the suit. The Court below ought to have seen that the plaintiff is having *prima facie* case and balance of convenience is in her favour and that if no injunction is granted, she being a lady, she would suffer irreparable loss.'

5. On the other hand, the learned counsel for the respondents/defendants while supporting the order of the Court below and while reiterating the defence of the defendants had contended as follows:

The Will relied upon by the plaintiff is not true, valid and genuine. The plaintiff is not the fostered daughter of Subbamma. She had falsely suppressed the close relationship of the defendants with her and also Subbamma. The plaintiff is not in a perfect mental condition. She is not aware of the details of the property. Her husband is behind the litigation. The husband of Subbamma, i.e., late Veeranna used to work as an employee at Port in Bombay; and, he had purchased the schedule properties in the name of Subamma @ Subbayamma. Veeranna used to stay in Bombay on account of his employment and his son-Adinarayana who is the father of the defendants and his mother used to manage the schedule properties. Having returned to the village, Veeranna had spent his last days with his wife at Yadurulanka village. After the intestate death of Subbamma, all the defendants have come into possession of the properties of Subbamma and the plaintiff has no right, title and interest much less possession over the plaintiff schedule properties. The Court below has rightly appreciated the facts and the documentary evidence and had rightly held that the plaintiff is not entitled to the equitable relief of injunction. Therefore, the impugned order does not call for any interference. No valid and sufficient grounds are made out. The appeal is devoid of merit and is liable to be dismissed.

6. I have already stated the pleadings of both the sides and I have already referred to the documents that are exhibited.

6.1. The case of the plaintiff is this: 'Subbamma and her husband had no issues and that therefore, they had fostered the plaintiff and had performed her marriage. The plaintiff and her husband had attended to the needs of Veeranna and Subbamma during their life times. After the death of Veeranna, they had attended to the needs of Subbamma. Out of love and affection, Subbamma had executed the registered Will

and bequeathed her property in favour of the plaintiff and that after the death of Subbamma, the plaintiff came into possession and was in peaceful possession and enjoyment of the plaint schedule property.' She had filed the following documents. Exhibit P1 is the registered Will dated 04.01.2014 executed by Byrisetti Subbamma; exhibit P2 is the copy of the registered sale deed dated 10.03.1959 executed in favour of Byrisetti Subbamma; exhibit P3 is the copy of the registered sale deed dated 19.02.1965 executed in favour of Birisetti Subbamma; exhibit P4 is the land tax receipt issued in favour of Byrisetti Subbamma; exhibit P5 is the endorsement dated 12.01.2015 of the Tahasildar I-Polavaram; exhibit P6 is the death certificate dated 07.02.2014 of Byrisetti Subbamma; exhibit P7 is the cc of decree in O.S.No.7 of 2015 on the file of the Junior Civil Judge, Mummidivaram; exhibit P8 is the vakalat filed by Reddi Satyanarayana Murty, Advocate; exhibit P9 is the vakalat filed by B.V.Subrahmanyeswara Rao, Advocate; and exhibit P10 is the memo filed by the plaintiff not pressing the suit in O.S.no.7 of 2015 on the file of the Junior Civil Judge, Mummidivaram.

6.2 On the other hand, the case of the defendants is that Subbamma and Veeranna had a son by name Adinarayana and that Subbamma had died intestate and that the plaintiff had suppressed not only about the previous suit but also the close relationship of the defendants with Subbamma. They had further contended as follows: 'The defendants are the sons of Adinarayana and grandsons of Subbamma. In fact, the plaintiff had not specifically pleaded her relationship with the 1st defendant. The 1st defendant is no other than the son-in-law of the plaintiff. Veeranna and Subbamma not only owned the plaint schedule property but also a house property during their life times and that after the death of Subbamma, the defendants have come into possession and enjoyment of the same. The defendants had filed the following documents: Exhibit R1 is the registered sale deed executed in favour of Byrisetti Subbamma; exhibit R2 is the title deed book in favour of Byrisetti Subbamma; exhibit R3 is the pattadar passbook in favour of Byrisetti Subbama; exhibit R4 is the certified copy of registered settlement deed executed by Byrisetti Subbamma; exhibit R5 is the bunch of three house tax receipts in favour of Byrisetti Subbamma; exhibit R6 is the plaint copy in O.S.No.7 of 2015 on the file of the Court of the Junior Civil Judge, Mummidivaram; and exhibit R7 is the endorsement of Tahasildar, I-Polavaram dated 12.01.2015.'

6.3 During the course of arguments, it is fairly conceded that the 1st defendant is none other than the son-in-law of the plaintiff. But the said fact was not mentioned in the plaint. The plaintiff had also suppressed by not stating in her pleadings that she had earlier filed O.S.No.7 of 2015 on the file of the learned Junior Civil Judge, Mummidivaram. Except filing the Will, which is disputed by the defendant, and the copies of sale deeds of Subbamma, the plaintiff did not file any other documents to show her possession much less exclusive possession of the plaint schedule property. Having regard to the facts and the documentary evidence, the Court below had held that the for suppression of material facts like the relationship and also filing of the former suit and for failure to prove lawful possession, the plaintiff is not entitled to the relief of temporary injunction. The court below had also held that the plaintiff had failed to establish a *prima facie* case, which is a *sine qua non* for grant of a temporary injunction.

6.4 The learned counsel for the plaintiff had relied upon the decisions in **D.Yadamma and others v. G.Suryanarayana, Best sellers Retail (India) Private Limited v. Aditya Birla Nuvo Limited. In D.Yadamma's case** (1 supra), it was held that when temporary injunction is sought in respect of vacant land, the presumption under law that possession follows title has to be invoked. In **Best sellers Retail (India) Private Limited's case** (2 supra), the Supreme Court had laid down the factors to be considered while passing an order of temporary injunction. Though it is a decision rendered under Company Law and one of the issues was juristic nature of the company, the Supreme Court in paragraph (26) of the judgment, having referred to the decision in **Kishorsinh Ratansinh Jadeja v. Maruti Corporation** had held as follows:

“It has been held by this Court in Kishoresinh Ratansinh Jadeja v. Maruti Corpn that it is well established that while passing an interim order of injunction under Order 39 Rules 1 and 2 CPC, the Court is required to consider:

- i. **whether there is a prima facie case in favour of the plaintiff;**
- ii. **whether the balance of convenience is in favour of passing the order of injunction; and**

- iii. **whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for.**

Hence, we only have to consider whether these well-settled principles relating to grant of temporary injunction have been kept in mind by the trial court and the High court.”

In **B.Narasimha Reddy v. Nama Damodhar Reddy**, a Division Bench of this Court at paragraph no.7 of the judgment had held as follows:

“It is settled principle of law that establishment of prima facie case, balance of convenience and irreparable loss likely to be caused to plaintiff if no injunction is granted, is sine qua non for granting interim injunction. Suffice to say that while deciding the interlocutory applications, the court should not express any opinion which ultimately affects the rights of the parties to the suit.”

There is no dispute with the legal proposition in the cited decisions. But in the case on hand, the trial Court had held that *prima facie* case is not established. The trial court has also taken note of the fact that the plaintiff had brought the suit without prosecuting the earlier suit and that the plaintiff had also suppressed not only the fact that she had earlier filed a suit but also the relationship of the defendants and that the plaintiff did not come to Court with clean hands and that therefore, she is not entitled to the relief of injunction. One land tax receipt in the name of Subbamma is filed by the plaintiff. The defendants filed title deed book and pattadar passbook and house tax receipt (three in number) and also a registered settlement deed executed by Byrisetti Subbamma. The trial court observed that the persons who gave third party affidavits are not the owners of neighbouring properties as is evident from the plaint schedule boundaries and that therefore, the said affidavits are not helpful to the plaintiff. No explanation is forthcoming as to why the plaintiff had suppressed the relationship between the parties. Having regard to the reasons, this Court finds that the finding of the trial Court in refusing to grant injunction in favour of the plaintiff is justified and that there is no merit in the appeal.

7. The Civil Miscellaneous Appeal is accordingly dismissed being devoid of merit.

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

M. SEETHARAMA MURTI, J

14th October 2015

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