

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

CIVIL MISCELLANEOUS APPEAL No.174 OF 2013

JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

This appeal is filed by the plaintiffs in O.S.No.6 of 2011 pending on the file of learned Special Judge for Trial of Cases under S.Cs. and S.Ts. (POA) Act – cum – Additional District Judge, Vizianagaram, aggrieved by the order and decree, dated 02.04.2012, passed in I.A.No.228 of 2011 in the said Suit.

The appellants and the respondents are own brothers. It is the specific case of the appellants that respondent No.1 being eldest brother is acting as Karta of the family and is managing the properties, and as the suit schedule properties are joint family properties and all the appellants are entitled to one share each, they filed the aforesaid Suit for partition and separate possession of the suit schedule properties. Pending Suit, alleging that respondent No.1 is taking steps to alienate the suit schedule properties, which will be detrimental to their interest, they filed I.A.No.228 of 2011, under Order XXXIX Rule 1 C.P.C., to grant *ad-interim* injunction restraining the respondents from alienating the suit schedule properties to any third party until disposal of the Suit. In the aforesaid petition, respondent No.1 filed counter affidavit admitting his relationship with the appellants, but denied other allegations and pleaded that the Suit schedule properties are his self-acquired properties and as such, appellants are not entitled to any share. While considering such petition, the trial Court, keeping in view the provision under Section 52 of Transfer of Property Act, on the grounds that selling of the

properties will not affect the rights of the appellants and that the alleged purchasers' names are not indicated in the grounds of the petition, dismissed the petition filed by the appellants by the impugned order, dated 02.04.2012.

In this appeal, it is contended by the learned counsel for appellants that the relationship between the appellants and the respondents is not in dispute and further, respondent No.1 being eldest member of the joint family, the properties stand in his name but the same are not his self-acquired properties.

Though notice is served on the respondents, there is no appearance on their behalf opposing the appeal.

Issuing Patta in the name of eldest member of the family is common. Inasmuch as the relationship of the parties is not in dispute, merely because the appellants have not indicated the names of the persons for whom respondent No.1 is proposing to sell the properties, the same is not a ground to refuse interim injunction as prayed for.

As the relationship between the parties is not in dispute, we are of the view that if the properties are allowed to be sold pending disposal of the Suit, it will lead to multiplicity of proceedings. To avoid the same, we deem it appropriate to allow the appeal by setting aside the impugned order, dated 02.04.2012. Consequently, I.A.No.228 of 2011 in O.S.No.6 of 2011 on the file of learned Special Judge for Trial of Cases under S.Cs. and S.Ts. (POA) Act – cum – Additional District Judge, Vizianagaram, stands allowed as prayed for. The respondents are restrained from alienating the suit schedule properties pending disposal of the Suit. As the Suit is of the year 2011, we further direct the trial Court to dispose of the Suit as expeditiously as possible, preferably within a period of six (6) months

from the date of receipt of a copy of this order.

Subject to the above, the appeal is allowed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. No costs.

R.SUBHASH REDDY, J

A.SHANKAR NARAYANA, J

June 04, 2015

MD