

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

C.M.A. No.1087 OF 2014

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JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

The unsuccessful petitioners (plaintiffs) preferred this

Civil Miscellaneous Appeal, under Order - XLIII Rule 1(r) of Code of Civil Procedure, 1908 (CPC), assailing the order, dated 19-09-2014, in I.A. No.916 of 2013 in O.S. No.159 of 2013, passed by the learned Special Judge for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - V Additional District Judge, Medak at Sanga Reddy, rejecting their request for grant of temporary injunction.

2. (a) The appellants filed the above suit before the trial Court for declaration of title and temporary injunction concerning Plaint - A and B schedule properties (hereinafter referred to as 'subject property'). Their case is that after the death of their father Yelmela Kistaiah, their mother's name viz., Smt. Anjamma was incorporated in the revenue records as

pattedar and possessor of the subject property and they have been in continuous possession and enjoyment of the same and on 13-11-2007, they all together executed an agreement of sale - cum - General Power of Attorney in favour of one Muktala Krishna. It is also their case that the respondent has obtained 13-B Certificate by influencing the Mandal Revenue Officer, Patancheru (MRO) in the year 1994 i.e., on 22-03-1994 and got entered her name in the revenue records. Aggrieved thereof, their mother Smt. Anjamma preferred an appeal before the Revenue Divisional Officer, Sangareddy (RDO) under Section 5(B) of Andhra Pradesh Record of Rights in Lands and Pattadar Pass Books Act, 1971 (for short 'ROR Act') and after due enquiry, her appeal was allowed by the order, dated 31-08-2007, setting aside 13-B Certificate, dated 22-03-1994, granted in favour of the respondent by the MRO, and the RDO simultaneously ordered for rectification of wrong entries in the revenue records and since then her name is shown as pattedar and possessor of the subject property.

(b) It is their further case that the respondent preferred revision before the Joint Collector, Sanga Reddy and the same was allowed by the order, dated

05-09-2013. Hence, apprehending that the respondent may dispossess them, they filed the above suit for the reliefs aforementioned and also filed

I.A. No.916 of 2013 seeking ad-interim injunction initially.

3. (a) On appearance, respondent filed the counter traversing the allegations. It is her case that she purchased the subject property from Smt. Anjamma, who is mother of the appellants, in the year 1963 under an unregistered document and the same was regularized under Section 5-A of ROR Act by the MRO by his order, dated 22-03-1994. It is according to her that eleven years thereafter, at the instigation of third parties, appeal was preferred, on behalf of late Smt. Anjamma, against the said order and the RDO without hearing her, allowed the appeal arriving at an incorrect conclusion.

(b) It is also according to her that on the basis of the orders passed by the RDO, in the year 2007, her name was deleted and the name of Smt. Anjamma was substituted and despite the death of Anjamma in the year 2008 itself, her name was continued in the village records. It is also according to her that the revision preferred by her before the Joint Collector, Sanga

Reddy in the year 2007 was allowed on 05-09-2013. The appellants came on record in the revision petition as the legal representatives of Smt. Anjamma and they did not set up any independent right.

It is according to her that since the appellants were not in possession of the subject property, the question of her interference does not arise. But, under the guise of ad-interim injunction, the appellants attempted to disturb her possession, and, therefore, sought to dismiss the petition by vacating the ad-interim injunction order.

4. Before the trial Court, appellants exhibited as many as thirty documents as Exs.P-1 to P-30 in order to substantiate their case and as against the same, respondent exhibited Exs.R-1 to R-15 in order to condemn the case of the appellants.

5. The trial Court having heard the learned counsel for both parties, on appraisal of documentary evidence placed by the respective parties, observing that since Exs.R-12 to R-15, certified copies of the pahanies reflect the name of the respondent showing her as pattedar and possessor of the subject property, the trial Court recorded a finding that the appellants

failed to prove their absolute ownership, possession and enjoyment of the subject property on the date of the suit and consequently vacated the ad-interim injunction granted on 27-09-2013 by dismissing the petition.

6. (a) The aforesaid order is under challenge in the instant appeal by the petitioners (appellants) contending in the grounds that by virtue of the order, dated 31-08-2007, passed by the RDO allowing the appeal, name of Smt. Anjamma was re-entered and thus, the appellants were in possession of the subject property on the date of filing of the suit which the trial Court, somehow, overlooked. It is also stated that the trial Court overlooked the fact that the respondent obtained 13-B Certificate on 22-03-1994 on the ground that she purchased the subject property under an un-registered simple sale deed, dated 15-08-1963, alleged to have executed by their mother, Smt. Anjamma, in her favour, but, as on 15-08-1963, Anjamma was not the absolute owner of the subject property and, as such, 13-B Certificate obtained by the respondent more than a decade after the alleged sale deed is void and does not confer any right on the respondent.

(b) It is also stated that the order, dated 05-09-

2013, passed by the Joint Collector, Sangareddy on the revision filed by the respondent is an issue in as much as, the suit itself is for declaration of title. Stating further that the appellants continued in possession of the subject property by virtue of the order, dated 31-08-2007, passed by the RDO, which was given effect by the order 12-10-2007 of the MRO, was sidelined by the trial Court, sought to set aside the same.

7. Heard Sri M. Jagannatha Sarma, learned counsel for the appellants, and Sri K.V. Mallikarjuna Rao, learned counsel for the respondent, and perused the material on record.

8. The short point that arises for consideration is whether the order under challenge is liable to be set aside?

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POINT:

9. To entitle themselves for the equitable relief of temporary injunction, the appellants are obligated with the duty to prove the three traditional requirements viz., *prima facie* title, balance of convenience and irreparable loss in their favour.

10. Learned counsel for the appellants would submit that the order, dated 05-09-2013, passed by the

Joint Collector in the revision petition filed by the respondent, is of no consequence in adjudicating upon the relief sought for by the appellants in the main suit and the fact that certificate under Section 5(B) of ROR Act was granted in favour of the mother of the appellants and pursuant thereto even the name of their mother was re-entered in the revenue records would show their *prima facie* title over the subject property besides their continued possession, as reflected from the certified copy of khasra pahani for the year 1954-55 marked as Ex.P-1, certified copies of pahanies marked as Exs.P-2 to P-17 including Exs.P-21 and P-22 original pattedar pass book and title deed, respectively, and that the Court below, somehow, has not properly appreciated the said evidence and arrived at an incorrect conclusion, and, thereby, faulted in dismissing their application.

11. On the other hand, learned counsel for the respondent would submit that as much as the appellants are not disputing purchase of the subject property by the respondent, way-back in the year 1963, though, under an unregistered sale deed, and even the said sale was regularized by issuance of 13-B Certificate which was, though, set aside in the appeal preferred by the appellant's mother, it was restored by

the Joint Collector,

Sanga Reddy in the revision by the order dated 05-09-2013, and, thus, on the date of filing the suit, revenue records would show the name of the respondent as possessor and pattedar of the subject property, and, therefore, the conclusion arrived at by the trial Court that the appellants failed to prove *prima facie* case and balance of convenience lying in their favour, cannot be faulted with, and, thus, supported the order under challenge.

12. The fact-situation occurring in the instant case is not in dispute. It is also not in dispute that the respondent has purchased the subject property under an unregistered sale deed in the year 1963 from the mother of the appellants and also the subsequent proceedings before the revenue authorities, as borne out from the record. Thus, it is clear that on the date of suit,

5-A Certificate issued by the Tahsildar by the order, dated

22-03-1994, in favour of the respondent was restored by the order dated 05-09-2013, by the Joint Collector in the revision petition setting aside 5(B) Certificate issued by the RDO through the order, dated 31-08-2007, under Ex.P-26 in favour of the mother of the appellants. Even

the order passed in the revision was executed by issuance of proceedings by the MRO through his proceedings, dated 21-12-2013, under Ex.P-30, re-entering the name of the respondent in the revenue records as pattedar and possessor of the subject property.

13. It is thus, clear that the appellants' names are not to be found in the revenue records on the date of filing of the suit to prove their possession. Concerning *prima facie* title to the suit schedule properties, it has to be held that so long as the order of the Joint Collector remains on record, it cannot be said that the appellants could prove their *prima facie* title. Even concerning irreparable loss, there is absolutely nothing on record to favour the appellants.

14. Thus, in our considered view, the appeal is devoid of merit, as such, the order under challenge does not warrant interference of this Court. The point is accordingly answered.

15. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications,

if any, pending in the appeal stand disposed of.

R. SUBHASH
REDDY, J

A. SHANKAR NARAYANA, J

June 25, 2015.
PV