

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A No.968 of 2015

JUDGMENT:

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This appeal is directed against the order, dated 01-10-2015, in I.A.No.220 of 2015 in O.S.No.1030 of 2015, wherein the Court below vacated injunction granted in favour of the appellant on 07-08-2015 and dismissed the application filed by the appellant under Order XXXIX Rules 1 and 2 C.P.C. seeking temporary injunction, to restrain the 1st respondent, his men, servants from making construction of either temple or other structure in the petition schedule property i.e. residential house bearing No.30-104/6 on plot No.6 in Survey No.362 admeasuring 200 square yards situated at Sainagar, Khanogiguda, Alwal Municipality, Ranga Reddy District, pending disposal of the suit.

The case of the appellant is that he is the absolute owner of the petition schedule property through registered sale deed document No.3285/1998, dated 11-12-1998 from Khaja Abdul Kareem, represented by G.P.A. holder A.Saraswathi. The father of defendants, S.Jaihind Reddy and seven others had entered into agreement of sale with G.Yadaiah and A.Saraswathi on 25-08-1980, which was registered as document No.12274/1980, for the land admeasuring Ac.05-18 guntas without reference to the sale made by the pattadars, for an extent of Ac.03-26 guntas, which was settled with the pattadars. Under the said agreement of sale, possession was delivered and the purchasers were authorized to convert land by obtaining necessary sanction. It is further stated that the appellant purchased the Plot No.6 in the year 1998 and in possession of the same and Alwal Municipality has given the

house No.30-104/6 to it. When the 1st respondent tried to interfere, the appellant made enquiry and came to know that the 1st respondent obtained collusive and nominal sale deed from the respondents 2 to 4, who claimed to be the sons of Jaihind Reddy and succeeded the property, which was already sold in favour of Alladi Saraswathi and G.Yadaiah in the year 1980. When the appellant had already purchased the petition schedule plot, in the year 1998 itself, the question of execution of sale deed document No.4886/2009 by the respondents 2 to 4 in favour of 1st respondent does not arise. It is further stated that after obtaining a certified copy of said document, the petitioner came to know that the respondents 2 to 4 claimed rights through proceedings Letter No.1223/2002, dated 31-03-2003 of Revenue Divisional Officer, (RDO) Chevella and assailing the said orders, an

appeal was filed before the Joint Collector, Ranga Reddy District and the Joint Collector by an order

dated 09-12-2013 set aside the orders passed by RDO, holding that subsequent purchasers are eligible to get the occupancy rights as the lands have already been converted into plots and sold out to various persons. In the entire extent of Ac.09-04 guntas was purchased by A.Saraswathi and others who converted the land into plots and sold to various persons. It is further stated that the order of the Joint Collector was challenged by the respondents 2 to 4 along with Narasimha Reddy, A.Srinivas Reddy and S.Shankar Reddy, sons of Venkata Reddy in W.P.No.3786 of 2005 and status quo order was granted in WPMP.No.5098 of 2005 on 01-03-2005.

On coming to know that

the 1st respondent obtained proceedings from the District Collector, R.R.District and from G.H.M.C. for construction of a temple, the petitioner filed W.P.No.32937 of 2012 and W.A.No.16 of 2013 and an order of status quo was granted by this Court on 09-01-2013. Subsequently, the Writ petition was allowed on the ground of violation of principles of natural justice by an order dated 22-07-2015 and remanded the matter to the Joint Collector. Filing of W.P.No.19500 of 2013 seeking status quo orders shows that the respondents 2 to 4 did not acquire possession of the land, which was already alienated, during the lifetime of their father. After disposal of W.P.No.32937/2012, the 1st respondent is trying to construct a temple on the petition schedule property. As such the present suit is filed.

The 1st respondent has filed counter saying that he is the bonafide purchaser of the petition schedule property having purchased it for a valuable sale consideration under registered sale deed and obtained possession of it and he is making construction of temple. It is stated that now the stage of construction is at the stage of third floor's roof after laying cellar, ground floor and first floor roofs, by investing Rs.50,00,000/-. Though the appellant claimed the petition schedule property through Khaja Abdul Kareem, represented by G.P.A., has not filed any documents to show his title and possession of his vendor as on the date of execution of alleged sale deed. Though the document was executed by G.P.A. holder A.Saraswathi, but there is no such G.P.A. mentioned or filed. It is alleged that A.Saraswathi and G.Yadaiah were the G.P.A. holders of Khaja Abdul Kareem and how A.Saraswathi alone could execute the document in favour of the appellant. As such, sought for dismissal of the petition.

Heard learned counsel for the appellant, who submits that the appellant claimed valid title through Ex.P.1 registered sale deed, bearing document

No.3285/1998, dated 11-12-1998 from Khaja Abdul Kareem through G.P.As. The sale in favour of the 1st respondent is on 17-09-2009 that is much subsequent to the sale in favour of the appellant and he also submits that status-quo was operating in W.P.No.3786 of 2005 till its disposal and when the status quo was vacated, Writ Appeal is filed, the Division Bench also granted status-quo pending W.P.No.3786 of 2005 and during status quo is in operation, the 1st respondent has not obtained possession from the respondents 2 to 4. While dismissing the W.P.No.32937 of 2012, this Court held that the petitioner has to approach proper forum. As such, the appellant filed the present suit. When the possession of land was delivered by virtue of Ex.P.1 to the appellant, without considering the same, the Court below vacated the injunction and dismissed the application for injunction. He also submits if the 1st respondent is allowed to construct temple and when once construction of the temple is completed, it will be difficult to recover the possession as such seeks status quo to be maintained by both the parties.

On the other hand, learned counsel for the 1st respondent submits that though Ex.P.1 does not confer title on the appellant, since source of title to the vendor is not made out and also goes to show that deeds executed by one A.Saraswathi representing the owner as G.P.A. But there is no mention of G.P.A. either in the sale deed or a copy of G.P.A. is filed. Even according to the appellant, A.Saraswathi or G.Yadaiah are the G.P.A. holders of owners. But it is not explained as to how A.Saraswathi alone could execute Ex.P.1. As such, the appellant cannot claim title basing on Ex.P.1. He also submits that no documents are filed by the appellant to show that the appellant is in possession of the property as on the date of filing of suit. As such, the Court below has rightly dismissed the injunction petition.

In this case it is to be seen that the Court below in Para No.45 of the order held that the appellant has not filed any document to show his possession over the petition schedule property in pursuance of Ex.P.1. It also found that the 1st respondent disputes the title of the vendors of the appellant. The appellant has not filed any document to prove that A.Saraswathi being G.P.A. holder under Ex.P.1 transferred valid title under Ex.P.1. It is also to be seen that no particulars of G.P.A. also mentioned in Ex.P.1. Even according to plaint averments the original owner sold the rights in favour of G.Yadaiah and A.Saraswathi. But A.Saraswathi alone cannot execute Ex.P.1. No doubt, the sale in favour of the respondent No.1 is pending in W.P.No.3786 of 2005 but the fact remains that when the appellant has filed application for temporary injunction, it is

for him to show that he is in possession of the schedule property as on the date of filing of suit and show prima facie case in his favour. In this case, the Court below found that the appellant could not establish prima facie case as Ex.P.1 shows that it is executed by GPA holder A.Saraswathi without mentioning the GPA particulars and more so, G.Yadaiah according to the appellant is being one of the agreement holder he is not a party to the agreement.

In view of above facts and circumstances, I do not see any error or infirmity in the order passed by Court below. However to safeguard the interest of the appellant,

the 1st respondent has to give un-conditional undertaking, in case the appellant succeeds in the suit, he shall handover possession of the suit schedule property by demolishing the buildings.

In view of the same, let the construction be completed, but to avoid future complications let the same may not be put to use for the purpose of activity of temple if not already put to use.

Subject to above observations, the appeal is dismissed. Miscellaneous petitions pending, if any, in the appeal shall stand closed.

17-12-2015
Nvl

A.RAJASHEKER REDDY,J

