

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
and
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL Nos.69 and 88 of 2015

COMMON JUDGMENT: (Per Hon'ble Sri Justice M.Satyanarayana Murthy)

Aggrieved by the order and decree dated 13.11.2014 in I.A.No.1090 of 2013 in O.S.No.527 of 2013 on the file of the VII Additional District Judge (Fast Track Court), Visakhapatnam, respondent Nos.2 to 9, 23 to 26 filed C.M.A.No.69 of 2015 and the 27th respondent therein filed C.M.A.No.88 of 2015 respectively, challenging the interim injunction granted against them restraining them from changing the physical features of the schedule property in any manner during pendency of the suit.

2. For convenience of reference, the parties to the appeal as ranked before the lower Court will be adopted throughout the judgment.

3. The petitioners-plaintiffs filed I.A.No.1090 of 2013 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'CPC') claiming temporary injunction during pendency of the suit restraining the respondent Nos.11 to 27 from changing the physical features of the schedule property in any manner till disposal of the suit. The petition was not pressed against respondent Nos.11, 12, 16, 18, 21 and 22 and the petition was dismissed against them.

4. The 1st petitioner is the wife and the 2nd petitioner is the daughter of late Lalam Satyam. The said Satyam, late Rayavarapu Simhachalam, Lalam Simmanna (1st respondent), Lalam Suryanarayana (2nd respondent), late Lalam Chinnayya and Lalam Sriramulu are the children of one late Lalam Yerranna. The 3rd respondent is the wife and respondent Nos.4 to 7 are the children of late Chinnayya. The 8th respondent is the wife and 9th respondent is the daughter of late Lalam Sreeramulu. Rayavarapu Simhachalam is the only daughter of late Lalam Yerranna, she died issueless. Thus, the petitioners are the legal heirs of late Lalam Satyam, respondent Nos.3 to 7 are the legal heirs of late Lalam Chinnayya and

respondent Nos.8 and 9 are the legal heirs of late Lalam Sriramulu, who succeeded their respective shares in the estate.

5. Lalam Yerranna inherited item Nos.1 to 9 of the schedule property from his ancestors. After his demise, all his sons succeeded the estate of Lalam Yerranna and became entitled to 1/5th share each. During his lifetime, late Lalam Satyam, husband of the 1st petitioner and father of the 2nd petitioner, shifted his abode to Tuni after his marriage for various reasons. Except the income from joint family property, Lalam Yerranna did not possess any source of independent income. Out of the income generated from the joint family property, sons of Lalam Yerranna acquired item Nos.10 and 11 of the schedule property under registered sale deeds and thus, sale deeds were obtained in the name of Lalam Simmanna (1st respondent) nominally. Thus, item Nos.10 and 11 forms part of the joint family property and they all enjoying the entire schedule property with joint rights.

6. During lifetime of Lalam Satyam, the petitioners demanded for partition of the property, but the respondent Nos.1 and 2 did not cooperate for partition of the schedule property by metes and bounds. However, after death of Lalam Satyam, the petitioners, being the wife and son, became co-owners of the schedule property along with respondent Nos.1 and 2 and others.

7. Respondent Nos.1 and 2 have been looking after the management of the property but did not render true and correct account of the income from the schedule property. When the petitioners requested respondent Nos.1 and 2 for partition of the property, they did not exhibit any interest for various reasons. Therefore, the petitioners kept quiet with the hope that the respondents would not deceive them, as the petitioners came to know that respondent Nos.1 to 10 obtained pattadar passbooks some time back for the schedule property misrepresenting and suppressing the factum of their right in the schedule property. Further, the petitioners came to know that the respondent Nos.1 to 10 sold away almost all the items of schedule property to the respondent Nos.11 to 27 taking advantage of absence of the petitioners.

8. Again, the petitioners demanded respondent Nos.1 to 10 to partition

the property and deliver vacant possession of their due share, but their demand was not attended while threatening them with serious consequences. Thereupon, the petitioners got issued a legal notice dated 06.11.2013 demanding partition of the schedule property, and, in turn, the respondents issued a reply denying right of the petitioners. Therefore, the petitioners filed the present suit for partition of the property.

9. As the respondent Nos.11 to 27, being the purchasers of the property for development, started construction work in the schedule property. If the constructions or changing of physical features of the schedule property are allowed, the matter will be complicated further and the property is become incapable of partition effectively. Therefore, the petitioners sought for temporary injunction restraining respondent Nos.11 to 27 from changing the physical features of the schedule property.

10. Respondent No.4 filed counter and the same was adopted by respondent Nos.2, 3, 5 to 9 and 23 to 26 (appellants in C.M.A.No.69 of 2015. Wherein, respondent No.4 denied the material allegations made in the affidavit while admitting the relationship between the parties, contending that the husband of the 1st petitioner, Lalam Satyam, left the house and residing at Tummuralova village at the house of his maternal uncle, who brought up and performed his marriage with his daughter and thus, Lalam Satyam went in illatam adoption about 80 years ago. Since then, the relationship between Lalam Satyam and respondent Nos.1 and 2 almost severed.

11. As the matter stood thus, respondent Nos.1 and 2, late Sriramulu and late Lalam Chinnayya used to reside at Pendurthi, jointly purchased some property with their own money, registered in the name of Lalam Simmanna and that all of them enjoyed the said property jointly. Late Lalam Satyam never contributed any amount to purchase the property nor enjoyed the same at any point of time. The 1st respondent and his three brothers separated the properties and obtained pattadar passbooks for the property allotted. Later all the brothers sold their properties to some third parties. Some time thereafter, the 1st respondent filed a suit for injunction against his

three brothers and the same was dismissed confirming the right, title and possession of each individual, against which, an appeal was preferred before the IV Additional District Court, Visakhapatnam and the same was ended in dismissal on merits. In the above suit, neither the plaintiffs nor said Lalam Satyam is a party. The petitioners or said Satyam have not enjoyed the property at any point of time and that they are nothing to do with the schedule property. Thus, the petitioners laid false claim to grab the property of the respondent Nos.1 to 10. Thereby, the petitioners are not entitled to claim any share and the suit is not maintainable under law, and consequently, prayed for dismissal of the petition.

12. Respondent No.17 filed counter denying the material allegations, *inter alia*, contending that he purchased the land from his vendor long back, thereafter sold away the same in the year 2001 or so and that he did not possess particulars of the sale transaction and that he is nothing to do with the present situation, and therefore, the suit is not maintainable against him, and consequently, the petition is liable to be dismissed and prayed for its dismissal.

13. Respondent No.27 (appellant in C.M.A.No.88 of 2015) filed an independent counter denying the material allegations of the affidavit filed along with the petition raising similar contentions of 4th respondent about purchase of the property so also separate living of Lalam Satyam at Tummalavolu, went in illatam adoption. The petitioners came into picture after death of Lalam Satyam and filed the present suit at a belated stage only to grab the property. Respondent No.27 is no way concerned with other property except item No.10 of the schedule property and he purchased item No.10 of the schedule property for a valuable consideration, and in possession and enjoyment of the same, invested huge amount on the property and raised construction therein. Therefore, the petitioners are out of possession and not entitled to claim temporary injunction during pendency of the suit and prayed for dismissal of the petition.

14. During the course of enquiry, on behalf of the petitioners, no oral evidence was adduced, but marked Exs.P.1 to P.6; whereas, on behalf of the

respondents, no oral evidence was adduced and no documents were marked.

15. Upon hearing argument of both the counsel, the trial Court granted interim injunction restraining respondent Nos.13 to 15, 17, 19, 20, 23 to 27 from changing the physical features of the schedule property during pendency of the suit.

16. Aggrieved by the order and decree dated 13.11.2014 in I.A.No.1090 of 2013 in O.S.No.527 of 2013 passed by the VII Additional District Judge (Fast Track Court), Visakhapatnam, respondent Nos.2 to 9 and 23 to 26 and 27 therein preferred the present appeal on various grounds, mainly contending that the father of the 2nd petitioner and husband of the 1st petitioner left the joint family about 80 years ago, went in illatam adoption, resided in Tummuralova and never in joint possession and enjoyment of the property, but suddenly, the petitioners came into picture and claimed right in the property, which was purchased by respondent Nos.1 and 2 in the name of Simmanna with their separate income. Therefore, the property cannot be termed as joint family property or acquired with the joint family nucleus and the finding of the trial Court that the petitioners are entitled to a share in the property *prima facie* is not based on any material.

17. The petitioners, if any entitled to claim share in the property, their claim is barred by limitation, since the said Satyam left the joint family about 80 years ago. Later the property was partitioned and several suits were filed regarding title and possession of the property among the legal heirs and in those suits the partition was upheld. The respondents have obtained pattadar passbooks and title deeds for their respective property allotted in the partition. Thus, the respondent Nos.1 to 10 alone in possession and enjoyment of the property till they sold the property to respondent Nos.11 to 27 and thereby the petitioners are not entitled to claim temporary injunction during pendency of the suit. It is further contended that respondent No.27 purchased item No.10 of the schedule property, raised construction after obtaining necessary approvals and permission from the concerned authority,

raised five floors building in item No.10 of the schedule property and it is at the stage of completion.

18. If for any reason, temporary injunction is granted, the respondents would be put to much inconvenience rather than the inconvenience the petitioners will be put to. Therefore, the petitioners have no *prima facie* case to succeed in the main suit, and, on the other hand, the respondent Nos.2 to 9 and 23 to 27 will be put to serious loss, which cannot be compensated by granting pecuniary damages, and the trial Court erroneously concluded that the petitioners established *prima facie* case and balance of convenience in their favour. Therefore, the order of the trial Court under challenge is erroneous and consequently, the order and decree of the trial Court are liable to be set aside.

19. During the course of arguments, Sri A.Sudarshan Reddy, learned senior counsel for the appellant-27th respondent, would contend that the 27th respondent having invested huge amount for raising construction and if for any reason, temporary injunction granted by the trial Court is confirmed, he will be put to loss, and that apart, the property was purchased in the name of Simmanna, who is the registered owner of item No.10 of the schedule property and until it is proved that it was acquired with the joint family nucleus, the property is presumed to be the separate property of Simmanna, the registered owner of the property, and in the absence of *prima facie* material to establish that item No.10 of the property was acquired with the aid of joint family nucleus, the Court cannot infer *prima facie* case in favour of the petitioners. On the other hand, the 27th respondent, if restrained from completing construction, will be put to serious injury, but no loss would be caused to the petitioners, if no injunction is granted.

20. It is further contended by the learned counsel that the order of the trial Court is totally silent about the three ingredients, which is *sine quo non* for grant of temporary injunction, viz., *prima facie* case, balance of convenience and irreparable loss, except observing at the end of paragraph No.12 of the order. Therefore, the order of the trial Court is erroneous on the face of record and prayed to allow the appeal setting aside the order and

decree of the trial Court dated 13.11.2014 in I.A.No.1090 of 2013 in O.S.No.527 of 2013.

21. The learned counsel for respondent Nos.2 to 9 and 23 to 26 would submit that the trial Court did not consider the contentions in proper perspective and that did not come to a definite conclusion about *prima facie* case, balance of convenience and irreparable injury, which are *sine quo non* for grant of temporary injunction in favour of petitioners and committed an error and prayed to allow the appeal, setting aside the order under challenge.

22. *Per contra*, Sri V.L.N.G.K.Murthy, learned counsel for the petitioners, would contend that the allegations made in the counter filed by the respondent No.4 would suffice to conclude that the property was purchased by all the joint family members and that it is a joint family property. There is no material on record to show that there is a severance of status or division of joint family property. Therefore, the property is deemed to have been continuing as joint family property and in view of the admission of the respondent No.4 in the counter, the property is deemed to have been purchased with the aid of joint family nucleus in the name of Simmanna. Therefore, it forms part of the joint family property and the petitioners are entitled to equal share in the joint family property. However, mere living separately having went in illatam adoption would not amount ouster of Lalam Satyam from the enjoyment of joint family property, and that apart, no specific plea of ouster was pleaded in the counter. In the absence of any plea of ouster and proof of the same, the petitioners are deemed to be members of Hindu undivided joint family and entitled to 1/5th share in item No.10 and other items of schedule property also, which is the subject matter of appeals.

23. It is further contended that the trial Court rightly recorded a finding that the petitioners are able to prove *prima facie* case and balance of convenience in their favour and that they would sustain irreparable loss, if no injunction is granted. Hence, the order of the trial Court does not call for any interference of this Court since no legal infirmity is brought to the notice of this Court and prayed to dismiss the appeal, confirming the order and decree

dated 13.11.2014 in I.A.No.1090 of 2013 in O.S.No.527 of 2013.

24. Considering the contentions of both the parties and perusing the order and decree under challenge, the sole point that arises for consideration is:

"Whether the respondent Nos.2 to 9 and 23 to 27 and their men be restrained from altering or changing the physical features of item Nos.1 to 11 of the schedule property during pendency of the suit?"

POINT:

25. The undisputed facts are that, the petitioners and respondent Nos.1 to 10 are closely related to one another. Originally, item Nos.1 to 9 of the schedule property were inherited by late Yerranna, father of late Satyam, Simhachalam, Simmanna, Suryanarayana, Chinnayya and Sriramulu. After death of Yerranna, his sons succeeded the estate of Yerranna who died intestate. Rayavarapu Simhachalam, the only daughter of Yerranna, died issueless, thereby, the said Satyam, Simmanna, Suryanarayana, Chinnayya and Sriramulu became entitled to 1/5th share. The main contention of respondent Nos.2, 3, 4, 5 to 9, 23, 26 is that item Nos.10 and 11 of the schedule property was the separate property purchased by respondent Nos.1 and 2 independently and obtained the registered sale deed in the name of the 1st respondent. Therefore, item Nos.10 and 11 are the separate properties of respondent Nos.1 and 2. The second contention of the respondents is that Satyam left the joint family about 80 years ago and went in illatam adoption to Tummuralova. Thus, the said late Satyam is ousted from enjoying the schedule property. In the absence of any *prima facie* material to show that item No.10 was acquired with the aid of joint family nucleus and it cannot be held to be part and parcel of the joint family property, and consequently, the petitioners are not entitled to claim 1/5th share in item No.10 of the schedule property, being wife and son of late Satyam, who is ousted from enjoying the schedule property. Thus, the respondents set up independent title to the property, whereas the petitioners claiming that item Nos.1 to 11 are the joint family property.

26. The specific contention of respondent Nos.1 to 4 is that the property was already partitioned and they are enjoying their separate shares allotted to them in the partition, thereby the division of property does not arise.

27. To claim temporary injunction during pendency of the suit, the petitioners have to establish three requirements, they are, *prima facie* case, balance of convenience and irreparable loss. If the petitioners failed to establish any one of them, the petitioners are disentitled to claim temporary injunction. In a judgment of the Apex Court in **Colgate Palmolive (India)**

Limited v. Hindustan Lever Limited^[1], it was observed as follows:

"Other considerations which ought to weigh with Court hearing the application or petition for the grant of injunction are as below:

- (i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefore;
- (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case the relief being kept flexible;
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or *prima facie* case in support of the grant;
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise. "

28. Similarly, in another judgment of the Apex Court in **Dalpat Kumar and another Vs. Prahlad Singh and others**^[2], it was observed by the Apex Court Apex Court, explaining the scope of material circumstances, as under:

"The phrases 'prima facie case', 'balance of convenience' and 'irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts *prima facie* case and balance of convenience."

29. In another judgment of the Apex Court in **M o h d . M a a n d o t h e r s v . K h u s h n t u n a** [3] Court laid down the principle and when the order of the extracted paragraph No. 1 Ltd. , v . A n t o x I n d i a (P) portion of it reads as under "14 The appeals before the exercise of discretion appeals, the appellate exercise of discretion substitute its own discretion has been shown to have capriciously or perversely the settled principles interlocutory and discretion is said to be a court will not reassess conclusion different from below if the one reaches possible on the facts and circumstances normally not be justified discretion under appeal considered the matter as to a contrary view exercised by the trial manner the fact that the different view may not Court's exercise of discretion

30. However, in another judgment in **A r s h a d Z a h e e r a n d o t h e r M u m b a i** [4] the Apex Court considering an application when interference by the exercised by the trial Court " The discretion of the temporary injunction or are made out by the plaintiff

- 1) Existence of a prima facie case in favour of plaintiff in injunction ;
- 2) When the need for protection is compared with or weighed against the rights of defendant's rights or rights , the balance of convenience of plaintiff ; and
- 3) Clear possibility of irreparable injury to plaintiff if the temporary injunction is not granted , in addition , temporary injunction is granted at the discretion of the court to grant such injunction to the plaintiff's conduct if the plaintiff approaches the court with evidence.

It is true that in case of buildings , irreparable damage is caused even before the trial by evidence that the plaintiff will suffer such loss , where the balance of convenience is in favour of plaintiff and a temporary injunction is granted to preserve status quo . "

31. In view of principles of law governing grant of temporary injunction , the court has held that the balance of convenience is a factor to be considered in the grant of temporary injunction . However , in the judgment , the court has held that the balance of convenience is a factor to be considered in the grant of temporary injunction .

32 In another case **Kashi Math Sanstha and another Vs. Srimad Sudhindra Thirtha Swamy and another**^[5] , the Apex Court while dealing with Order 39 Rules 1 and 2 of C.P.C., discussed about the requirements for grant of temporary injunction during pendency of a suit and ruled as follows:

"It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted."

33. Thus, it is the duty of the petitioners to prove that they got *prima facie* case to go for trial, they will sustain irreparable loss in case no injunction is granted and also establish that balance of convenience is in their favour. If, for any reason, the petitioners failed to *prima facie* establish any one of the requirements, they are disentitled to claim the relief of temporary injunction.

34. This Court had an occasion to deal with a similar issue in **Yashoda Super Specialty Hospitals, partnership firm, rep. by its partner G.Devendar Rao Vs. Yashoda Medicare and Research Centre (P) Limited, a company registered under the Companies Act, 1956, having its registered office at New Delhi, rep. by its Director and another**^[6], wherein it was held as follows:

"The petitioner must satisfy that there is a serious question to be tried at the hearing and that on facts before it, there is a probability that plaintiff is entitled to relief. When the material available to Court at the hearing of application, must satisfy that success at the trial is probable and impending danger must be eminent and impressive, the Court can grant interim injunction."

35. In **Allappuzha Municipality Vs. T.J.Paul**^[7], Kerala High Court, giving a different meaning to the word *prima facie* case, held as follows:

"The Court should consider whether there is a bona fide contention between the parties or a serious question to be tried or there should be a fair and arguable or debatable case for the petitioner to go for trial."

36. In **United Commercial Bank Vs. Bank of India**^[8], the Apex Court held as follows:

"No injunction could be granted under Order 39 Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried."

37. In view of the law laid down by the Apex Court, this Court and other High Courts, the meaning of the word *prima facie* case is a *bona fide*

contention between parties or a case to go for trial involving a serious question of controversy between parties or a fair or arguable or debatable case. If there is no such case for the petitioners, the petitioners are not entitled to claim temporary injunction during pendency of the suit.

38. Keeping in mind the meaning of the word *prima facie* case in the various decisions referred to supra, we must necessarily examine the case of the petitioners. According to the petitioners, the property was purchased in the name of 1st respondent with the aid of joint family nucleus, whereas the respondents' contention is that it is separate property of the respondent Nos.1 to 4, and that the joint family has no sufficient nucleus. *Prima facie*, the land own and possessed by the joint family as per the schedule, most of the items of land is dry land of small bits, whereas, item Nos.10 and 11 are of large extent of Ac.2-24 cents and Acs.1-14 cents within the specified boundaries. If for any reason, the income from item Nos.1 to 9 is sufficient to acquire item Nos.10 and 11, the Court may presume that the item Nos.10 and 11 of the schedule property was acquired with the aid of joint family nucleus.

39. It is settled principle of Hindu Law that there is always a presumption in favour of the family being joint, till the otherwise is proved. So for as properties are concerned, such presumption is not available. However, where, a coparcener, asserting the jointness of property, proves to the satisfaction of the Court, that there existed sufficient nucleus for the joint family to acquire property, the burden shifts to the one, who pleads that any item of properties, in his self acquisition (vide **Pulimi Bapa Reddy v. Pulimi Dasaradharama Reddy**^[9]). Therefore, initially, the burden is upon the person who is asserting that the schedule property is joint family property, but *prima facie*, the document was registered in the name of Simmanna (1st respondent).

40. In a judgment of the Apex Court in **Valliammal (d) by L.Rs. vs. Subramaniam and others**^[10], the Supreme Court ruled that:

"There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the document

was taken benami in the name of another person for some reason, but only a benami. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder."

According to the above judgment, when the property is registered in the name of an individual, he is presumed to be the owner of the property till it is proved that consideration was paid by different person other than the owner and that who paid the consideration is continuing in possession of the property. These questions cannot be gone into at the stage of interlocutory application.

41. If the principles laid down by the Apex Court in the decisions referred above to the present facts of the case, the 1st respondent is presumed to be the owner as on today, since, the proof of possessing sufficient joint family nucleus to acquire the property depends upon the evidence adduced by both the parties during trial. Hence, the material on record, at best, established *prima facie* that Simmanna was the original owner of item No.10 of the schedule property and sold the same to the 27th respondent. If the principles laid down in the above judgments are applied to the present facts of the case, the 1st respondent is the *prima facie* owner of the property and thereby, we find no *prima facie* strong case to go for trial. The petitioners also claimed temporary injunction in respect of all the items of schedule property against respondent Nos.11 to 26 but not pressed the petition against some of the respondents. The C.M.A.No.69 of 2015 is filed by respondent Nos.2 to 9 and 23 to 26, though no relief was claimed and granted against respondent Nos.2 to 9, therefore respondent Nos.2 to 9 are not aggrieved parties to plea the appeal. Hence, the appeal of respondent Nos.2 to 9 is liable to be dismissed. Accordingly, appeal of respondent Nos.2 to 9 is dismissed. Respondent Nos.23 to 26 also joined as appellants in C.M.A.No.69 of 2015 as interim injunction is granted by the trial Court. The pleadings of petitioners is silent as to how respondent Nos.23 to 26 are claiming the property except a bare allegation that respondent Nos.11 to 27 purchased the joint family property. In the counter filed by respondent No.4 and adopted by respondent Nos.23 to 26, no specific plea of purchase of specific item of property was raised. Hence, the pleadings on record are

insufficient. Questioningly, the trial Court while stating that respondent Nos.23 to 26 adopted the counter of respondent No.4 in paragraph No.3, observed that the respondent Nos.23 to 26 did not file counter in paragraph No.11, not even considered the allegation of counter of respondent No.4 when was adopted by respondent Nos.23 to 26. The trial Court mostly concentrated on the principle of ouster and concluded that the schedule property is joint family property as the respondent Nos.2 to 10 did not deny the jointness, without looking at the pleading that item No.11 is the separate property of respondent Nos.1 and 2 as per the pleadings in the counter of respondent No.4. The trial Court's conclusions are bereft of proper legal reasoning and thereby grant of relief by the trial Court is erroneous. The trial Court did not consider the facts and material on record in proper perspective, merely because, the respondents failed to prove division of property by metes and bounds, concluded that the petitioners are also the joint owners of the property being the members of Hindu undivided joint family. This approach of the trial Court appears to be *ex facio* erroneous.

42. The other two requirements for grant of temporary injunction are irreparable loss and balance of convenience. In the present facts of the case, respondent Nos.23 to 26 are changing physical features by developing the land and the 27th respondent allegedly raised construction of five floors and it is at the stage of completion, after purchasing item No.10 and obtaining permission from the concerned authorities.

43. During the course of arguments, Sri Sudarshan Reddy, the learned senior counsel for the 27th respondent (appellant herein), would contend that the construction was almost completed and in case, any temporary injunction is granted restraining 27th respondent/appellant from completing construction, he will put to irreparable loss, whereas the petitioners would not put to any loss even construction is completed, and that the 27th respondent is entitled to claim equities at the time of passing final decree, in case the partition decree is passed. No doubt, the suit was filed when the construction was at the beginning, but during pendency of the interlocutory application, the 27th respondent (appellant herein) was able to complete major part of

construction investing huge amount. It is a common knowledge that to raise construction of five floors, the 27th respondent is supposed to incur substantial amount. In case, the 27th respondent is restrained from completing construction or changing or altering the nature of property, certainly, he would put to irreparable loss much less the loss which cannot be compensated by granting pecuniary damages. On the other hand, the petitioners would not sustain any loss, if no injunction is granted. However, the construction raised is also subject to the result of suit. Therefore, the question of petitioners sustaining irreparable loss is a myth and thereby, they are disentitled to temporary injunction during pendency of the suit.

44. The third requirement for grant of temporary injunction is balance of convenience. The balance of convenience or inconvenience to the parties depends upon the circumstances of each case. In the instant case, the total property sought to be partitioned is 11 items consisting of various extents. The total extent is Ac.7-08 cents, and at best, the plaintiffs are entitled to 1/5th share of it, which would come to Ac.1-416 cents. If, for any reason the suit is decreed, the property on which the construction is raised can be allotted to the vendors of the plaintiffs subject to their entitlement and the 27th respondent may claim equities, similarly if the respondent Nos.23 to 27 purchased the property, same can be allotted. If for any reason, interim injunction granted by the trial Court is upheld, certainly, the respondent Nos.23 to 27 (appellants herein) would put to much inconvenience. Therefore, the balance of convenience is in favour of the respondent Nos.23 to 27 (appellants herein).

45. Thus, the petitioners miserably failed to establish the three requirements for granting temporary injunction under Order 39 Rules 1 and 2 of CPC to restrain the 27th respondent from altering or changing the nature of item No.10 of the schedule property. On the other hand, the respondent Nos.23 to 26 and respondent No.27 (appellants herein) established that he would be put to serious loss, if injunction is granted, much less the loss which cannot be compensated by granting pecuniary damages, as 27th respondent already started construction after obtaining necessary permission from the

authorities concerned long back.

46. Grant of relief under Order 39 Rules 1 and 2 of CPC is purely discretionary to prevent the damage being caused to the petitioners due to infringement or invasion of legal right. But here, the petitioners would not sustain any loss much less irreparable loss, having approached the Court 80 years after shifting their residence to Tummuralova. In such case, the trial Court would not have exercised its discretion to grant temporary injunction. In any view of the matter, if for any reason, the petitioners are entitled to a share in the item No.10 of the property also, the construction is subject to result of the suit and the 27th respondent is not entitled to claim equities on account of completion of construction to deny share in the property.

47. In **Colgate Palmolive (India) Limited** (1st supra), the Supreme Court laid down certain guidelines where Court can exercise discretion to grant or refuse relief of interim injunction. Even if those guidelines are applied to the present facts of the case, the petitioners would not suffer any injury or damage which cannot be compensated by pecuniary damages.

Furthermore, the plea of the 27th respondent is plain and supported by documentary evidence, and on the other hand, if no injunction is granted, the interest of the petitioners would not be affected for the reason that the construction is being raised in part of the property, i.e., item No.10 of the schedule property. Therefore, in those circumstances, it is difficult to exercise judicial discretion to grant temporary injunction. But the trial Court, without considering serious consequences, granted prohibitory order of interim injunction.

48. The trial Court mostly placed reliance on Exs.P.1 to P.6 to arrive at such a conclusion. These are only legal correspondence, which would not help the petitioners to claim a discretionary relief of temporary injunction under Order 39 Rules 1 and 2 of CPC. Ex.P.5 is the photostat copy of the registered sale deed executed by the 1st respondent and his family members in favour of the 27th respondent, which *prima facie* established that the 1st respondent is the owner of the property. Similarly, Ex.P.6 is the photostat copy of the registered sale deed executed by the 2nd respondent and his

family members in favour of the 27th respondent. In both the documents, the source of title to the property was mentioned. *Prima facie*, the 1st and 2nd respondents were the owners of item No.10 of the schedule property and sold the property to the 27th respondent (appellant herein).

49. On overall consideration of entire material available on record, it is evident that the trial Court did not consider the serious consequences that will result on account of granting temporary injunction and loss going to be caused to the 27th respondent when the construction is at the stage of completion, so also, *prima facie* case and committed a grave illegality in granting temporary injunction restraining the 27th respondent and his men from changing or altering the physical features of item No.10 of the schedule property. Similarly, the trial Court without deciding purchase of any of items of property by respondent Nos.23 to 26, granted interim injunction.

50. Hence, the order under challenge is hereby set aside allowing both the appeals and the I.A.No.1090 of 2013 in O.S.No.527 of 2013 on the file of the trial Court is dismissed. However, the dismissal of I.A.No.1090 of 2013 would not preclude the petitioners to claim share in the property in the event of their success in the suit. Hence, this point is held in favour of the respondent Nos.23 to 27 (appellants herein) and against the petitioners (respondent Nos.1 and 2 herein).

51. In the result, both the civil miscellaneous appeals are allowed setting aside the order and decree dated 13.11.2014 passed in I.A.No.1090 of 2013 in O.S.No.527 of 2013 on the file of the VII Additional District Judge (Fast Track Court), Visakhapatnam, and, consequently, the I.A.No.1090 of 2013 is dismissed. There shall be no order as to costs.

52. As a sequel thereto, miscellaneous petitions, if any pending in these appeals, shall stand closed.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 22-04-2015

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[\[1\]](#) AIR 1999 SC 3105
[\[2\]](#) AIR 1993 SC 276
[\[3\]](#) 2013(9) SCC 221
[\[4\]](#) 2006(5) ALT 33 SC
[\[5\]](#) AIR 2010 SC 296
[\[6\]](#) 2010(6) ALT 466
[\[7\]](#) 1995 Kerala pages 36 to 39
[\[8\]](#) AIR 1981 SC 1426
[\[9\]](#) 2005(6) ALT 86
[\[10\]](#) (2004) 7 SCC 233