

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A.No.651 of 2015

JUDGMENT:

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This appeal is filed against the order and decree dated 30-04-2015 passed in I.A.No.2534 of 2014 in A.S.No.198 of 2014 on the file of IV Additional District Judge, Kakinada, whereunder the lower appellate Court granted injunction against the appellant restraining her by way of temporary injunction not to alter the physical features of the plaint schedule property or to alienate the same to any third parties pending disposal of the main appeal.

The case of the appellant is that the appellant filed suit in O.S.No.643 of 2011 for declaration of title and injunction against the respondents 1 and 2 herein and the respondents 1 and 2 filed O.S.No.265 of 2011 on the file of II Additional Senior Civil Judge, Kakinada for cancellation of gift deed executed by the appellant as invalid. Both the suits were tried together and by common judgment, dated 29-10-2014, allowed the suit filed by the appellant in O.S.No.643 of 2011 and dismissed the suit in O.S.No.265 of 2011. Against the same, the respondents 1 and 2 filed the appeal in A.S.No.198 of 2014 before the IV Additional District Judge, Kakinada. In the said appeal, the respondents 1 and 2 filed I.A.No.2534 of 2014 seeking temporary injunction and the lower appellate Court granted temporary injunction against the appellant not to alter the physical features of the plaint schedule property and to alienate the same to any third parties. Against the same, the present appeal is filed.

Both counsel states that the appeal itself can be disposed of. The impugned order is in Interlocutory application and as such, advanced arguments in the appeal itself.

Learned counsel for the appellant submits that the appellant is 87 years old and there is no shelter to her. As such, she being the old lady intends to live in the ground floor of the suit schedule property and for that the appellant prays

to set aside the impugned order and sought permission for making alteration of ground floor portion of the suit schedule property in order to enable her to live there.

Learned counsel for the respondents opposed the same and says that the suit schedule property cannot be alienated in favour of third parties as it will lead to multiplicity of proceedings when third parties are involved.

Admittedly, the appellant is the grand mother of the respondents 1 and 3 and the 2nd respondent is the husband of the 1st respondent. Admittedly, the appellant is 87 years old and the case of the respondents 1 and 2 is also that the appellant gifted the property to them. However, the appellant succeeded in her suit before the trial Court and the appellate Court without considering the same in proper perspective by only observing that balance of convenience and *prima facie* case were in favour of the respondents and granted temporary injunction.

In view of the above, I am of the opinion that the appellant cannot be thrown out at the age of 87 years and as such she is permitted to make necessary alterations in the ground floor of the suit schedule property by enabling her to live there. To that extent, the impugned order is modified and insofar as injunction not to alienate in favour of third parties is maintained.

With the above observations, the CMA is disposed of. Miscellaneous petitions pending, if any, in the CMA shall stand closed.

A.RAJASHEKER REDDY,J

16-12-2015

Nvl

