

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.3858 of 2014

Between:

P.Raja Vengal Rao

.....Petitioner

and

Praphulchandra Mukpalkar

.....Respondent

Date of Judgment pronounced : 06-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3858 of 2014

ORDER:

Heard Sri E.Madan Mohan Rao, learned counsel for

the petitioner. Although the name of Sri S.Ganesh Rao, learned counsel, is printed in the cause list, he was not present yesterday morning and afternoon and also today, in the morning and afternoon. Therefore, the matter is decided *ex parte*.

2. This Revision Petition is filed challenging the Order dt.12-08-2014 in C.M.A.No.15 of 2012 of the VIII Additional District Judge, Nizamabad confirming the order dt.12-09-2012 in I.A.No.64 of 2012 in O.S.No.10 of 2012 of the Principal Junior Civil Judge, Nizamabad.

3. Petitioner herein is the defendant in the above suit. The respondent/plaintiff filed the said suit against the petitioner for a perpetual injunction restraining the petitioner from interfering with his alleged possession and enjoyment of the plaint schedule property. The plaint schedule property is an extent of 2348 sq yds consisting of a double storied residential house of the respondent bearing House No.11-1-260 situated within Kanteshwar village shivar, Kanteshwar village and Mandal of Nizamabad District.

4. It is the case of the respondent that he is the absolute owner of the above property which forms part of Sy. Nos.311 and 316; the total extent of the land in this survey number is Ac.1.05 cts; that it is the self acquired property of the respondent's father; there was a partition in the family of the respondent on 10-07-2009 under

registered partition deed; and under the said partition, subject land was allotted to the respondent including the residential house therein. He alleged that the petitioner is a neighbouring resident living in House No.11-1-260 and during the Sankranti vacation in January 2012, when the respondent was out of station, petitioner had locked the gate and entrance to the suit schedule property, and the petitioner with the help of his henchmen and anti social elements on 09-01-2012 broke open the lock of the entrance gate and dumped Morum soil on the bore well submersible pump and other portion of the suit schedule property. He stated that he made a complaint to the Sub Inspector of Police, Nizamabad on 15-01-2012 against the petitioner and another complaint to the Deputy Superintendent of Police, Nizamabad on 16-01-2012 and then filed the suit.

5. Along with the suit, the respondent filed I.A.No.64 of 2012 under Order 39 rules 1 and 2 CPC seeking temporary injunction restraining the petitioner from interfering with his possession and enjoyment of the plaint schedule property and reiterating the averments made in the plaint. He also filed an additional affidavit wherein he admitted that he sold land in Sy. No.311 to the petitioner and further stating that land sold to the petitioner was plot No.8 in Sy. No.311 of extent 208.25 sq. mts. under registered sale deed

dt.19-09-1994 being document No.4459 of 1994 and admitted that he also executed three other sale deeds on the same day in respect of other bits of land adjacent thereto. He claimed that he did so since he obtained title to the property under a registered gift deed dt.12-09-1983 executed by his father in his favour in respect of 14 ½ gts. of land in Sy. No.311.

6. In the sale deed executed by the respondent in favour of the petitioner, the father of the respondent was attester and the plan annexed to the sale deed indicated that what was sold to the petitioner was plot No.8/C and to the south of the said plot, there is a 20' wide road providing access to the plot sold as seen from the plan annexed to the sale deed and only through the said road, the plot can be accessed.

7. In the Written Statement filed by the petitioner and also in the counter filed in I.A.No.64 of 2012, the petitioner contended that the respondent, representing that he was owner of plot No.8 in Sy. No.311 measuring 14 ½ gts formed plots and a 20' wide road in between his property and the plots running from east to west connecting to the Armour High Way road; he had sold away the said plots under various registered sale deeds; and that the petitioner had purchased plot 8/B under registered sale deed 4459/1994 and another plot No.8/C under registered sale deed No.4460/1994 and got

possession of it. He contended that the sale deeds show that to the south of the plots, there is 20' wide private road which is shown to be used commonly by all concerned and it was not a thorough way to outsiders. He contended that he constructed a house in plot No.8/C after obtaining permissions from the Municipality and the Municipal plan also shows the extents of 20' wide road therein. He stated that since then, himself and the purchasers of other plots along with the respondent were commonly and jointly using the said 20' wide road. He also stated that plots 8/A and 8/D adjacent to plots 8/B and 8/C were sold by the respondent to one Rama Mohan Rao and Smt. D.Rama Devi under two separate sale deeds and the 20' wide road is shown in both those sale deeds also as providing access to those plots. The petitioner contended that the respondent, with a *mala fide* intention to usurp the said land, suppressed these facts and filed the suits and therefore he is not entitled for equitable relief of injunction. He specifically contended that himself and other purchasers of plots are concerned only with the 20' wide road and not with the entire suit schedule property; that they are entitled to the right to use the said road commonly and jointly; and the respondent is not entitled to prevent him from using the said road. He denied that he broke down the lock of the gate and dumped moram soil on the bore well and submersible pump, cut down the guava tree and created mischief with ill intention on 09-01-

2012 with the help of anti social elements and stated that the said allegation is false allegation. He also filed third party affidavits along with the counter stating that the petitioner is entitled to common use of the 20' wide road and the respondent is not entitled to put obstructions therein and deny him right to use the said road.

8. In the additional affidavit filed by the respondent, the respondent sought to contend that the road referred to by the petitioner is part of Sy. No.316 and not part of Sy. No.311 in respect of which he had executed sale deeds in favour of the petitioner and others. He alleged that Sy. Nos.316 and 311 belong to his father, who was alive as on 19-09-1994 when the said sale deeds were executed and he i.e. the respondent was not competent to sell his father's property as on that date or to create any rights in favour of the petitioner in respect of the said 20' wide road. He however stated that his father died subsequently and in a registered partition deed dt.10-07-2009, the area including the 20' wide private road, which is being claimed by the petitioner as a common road, also fell to his share.

9. An additional counter affidavit was filed by the petitioner pointing out that the sale deed in favour of the petitioner having been attested by the father of the respondent and also his brother, it has to be presumed that the road was allowed to be used by the owners of the

plots and lands in Sy. Nos.311 and 316 on either side of the 20' road and it ceased to be the exclusive property of the father of the respondent. It was also contended that if really the respondent had no authority to show the 20' wide road giving access to the plots conveyed under the sale deeds, he would not have shown it in the maps attached to the registered sale deeds executed by him in favour of the petitioner on 19-09-1994; and he cannot now be allowed to state that the land in Sy.No.311 is different from the land in Sy. No.316 wherein the road is located and adjacent to the plot purchased by the petitioner, alleging that it belongs to his father. It is further contended that the sale deeds executed by the respondent which are attested by the father of the respondent and his brother do not indicate that the road to the south of the plots was the exclusive private road of the father of the respondent and the subsequent use and conduct of the parties also shows that there was an open and implied covenant in the said sale deeds that the road is common to the purchasers of plots. There is no negative covenant also therein prohibiting the purchasers such as the petitioner from using it. It is further contended that except this road on the south of the plots purchased by the petitioner and others, there is no other approach road on the other three sides enabling the petitioner to approach the main road and therefore there is also an easement of necessity entitling the petitioner to the right to use the 20' road

shown in the sale deeds to approach the main road.

10. In the I.A.No.64 of 2012, the respondent marked EXs.P-1 to P-11 and the petitioner marked Exs.R-1 to R-6.

11. By order dt.12-09-2012, the Court below granted temporary injunction in favour of the respondent restraining the petitioner from interfering with the possession and enjoyment of the plaint schedule property. It held that there was an admission by the petitioner that the respondent is the owner of the petition schedule property and that only the extent of petition schedule property was disputed by the petitioner. He further held that Exs.P-1 to P-4 filed by the respondent *prima facie* disclose that he is the owner and possessor of the suit schedule property. It held that the plea raised by the petitioner with regard to interference with the alleged 20' wide road by the respondent would be decided only in a full-fledged trial and cannot be decided at the interlocutory stage.

12. Challenging the same, the petitioner filed C.M.A.No.15 of 2012 before the VIII Additional District Judge, Nizamabad.

13. By order dt.12-08-2014, the lower appellate Court modified the order of the trial Court by setting aside the temporary injunction granted by it and directing the

status quo over the petition schedule property to be maintained prohibiting both parties from dealing with the property till the disposal of the suit. It held that the existence of the road was disputed by the respondent although the sale deeds Exs.R-1 to R-3 and R-6 executed by the respondent show such a road in the plan annexed to the sale deed. It held that existence of the road and the rights of the respondent over the same have to be decided in a full-fledged trial after evidence of both parties is placed on record and after hearing them. Although it was contended by the petitioner that tin sheets had been erected on the road, the lower appellate Court observed that the question whether the tin sheets were erected prior or subsequent to grant of temporary injunction would be decided at the time of the trial. It also declined to appoint an advocate commissioner and also refused to permit him to file certain additional material.

14. Challenging the same, this Revision Petition is filed.

15. Sri E.Madan Mohan Rao, learned counsel for the petitioner contended that the order passed by both the Courts below are perverse and both courts had failed to apply their mind to the documents filed on behalf of the petitioner which categorically show the existence of 20' wide road to the south of the property purchased by the petitioner from the respondent under the registered sale

deeds dt.19-09-1994. He further contended that in the additional counter filed by the respondent in the trial Court, the respondent had categorically admitted that he did execute those sale deeds and his only plea was that the properties sold to the petitioner fell in Sy. No.311 while the 20' wide road fell in Sy. No.316 belonging to his father (as on the date when the sale deeds were executed) and therefore no right in the land covered by the road could be transferred to the petitioner by him. He pointed out that once the respondent admits that, after the death of his father, there was a registered partition deed dt.10-07-2009 under which even the rights in the 20' wide road were also secured by him, Section 43 of the Transfer of Property Act, 1882 is attracted and the doctrine of "feeding the grant by estoppel" would come into operation and confer right on the petitioner to use the 20' wide private road also as a matter of right. He contended that the father of the respondent, had attested the sale deed executed by the respondent in his favour on 19-09-1994 and even if the father of the respondent had been alive, he would be estopped from denying the right of the petitioner to use the 20' wide road. He contended that mischievously the respondent, who is an advocate, has intentionally shown the entire property belonging to him in the plaint schedule even though the dispute is only with regard to the usage of 20' wide private road by the petitioner; and by misleading the trial Court as well as lower appellate Court,

obtained orders from the said Courts.

16. I find considerable force in the submission of the learned counsel for the petitioner. Ex.R-2 sale deed in respect of plot No.8/C executed in favour of the petitioner by the respondent shows 20' wide private road on the south. Even Ex.R-3 is the sale deed executed on 19-09-1994 by the respondent in favour of Smt.D.Rama Devi in respect of plot No.8/D and the said sale deed also indicates 20' wide private road to the south of the said plot. Both the sale deeds were attested by the father of the respondent and also his brother. There is no recital in either of the sale deeds that the 20' wide private road to the south and the said plots 8/C and 8/D is the exclusive private property of the father of the respondent and that petitioner or Smt. D.Rama Devi had no right to use the said road.

17. Even otherwise, assuming for the sake of argument without conceding that the land sold to the petitioner by the respondent fell in Sy. No.311 and the 20' wide road fell in Sy. No.316 belonging to his father, once the father of the respondent died and under the registered partition deed dt.10-07-2009, the land covered by the 20' wide private road also fell to the share of the respondent, clearly the doctrine of "feeding the grant by estoppel" arises and the respondent is precluded from contending that no right was conveyed to the petitioner to use the said

road.

18. Unfortunately neither the trial Court nor the lower appellate Court applied their mind to the documents filed by the petitioner and simply looked at the documents filed by the respondents and decided the I.A. and C.M.A. postponing any consideration of the contentions raised by the petitioner to the final hearing of the suit. This action on the part of the trial Court as well as the lower appellate Court is strongly deprecated.

19. In my considered opinion, the respondent having suppressed the fact that he had executed sale deeds in favour of the petitioner showing the 20' wide private road to the south of the property sold by him to the petitioner and having raised pleadings suggesting that the entire property of the respondent is under threat from the petitioner, deliberately misled the Courts below to secure favourable orders. Therefore, I am of the considered opinion that he has not approached the Court with clean hands.

20. In this view of the matter, the order dt.12-08-2014 passed by VIII Additional District Judge, Nizamabad, in C.M.A.No.15 of 2012 and order dt.12-09-2012 in I.A.No.64 of 2012 by the Principal Junior Civil Judge, Nizamabad cannot be sustained and they are accordingly set aside. Consequently any structures erected on the disputed 20' wide private road by the respondent are also

liable to be removed.

21. The Civil Revision Petition is allowed with the above directions with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

22. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-08-2015

kvr