

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

CIVIL MISCELLANEOUS APPEAL No.266 of 2015

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JUDGMENT: (Per Justice R. Subhash Reddy)

This Civil Miscellaneous Appeal is filed by the defendants in O.S.No.326 of 2014 on the file of the VII Additional District and Sessions Judge, Vijayawada, aggrieved by the order dated 11.03.2015 passed in I.A.No.357 of 2014 in O.S.No.326 of 2014.

2. For the sake of convenience, the parties are referred to, as they were arrayed in the O.S.

3. Petitioner filed the aforesaid suit for declaration and consequential injunction with regard to the plaint schedule property, which is a residential house, constructed in an area of 340 Sq. yards, consisting of I and II floors, situated in Vijayawada Municipal Corporation area. It is the case of the petitioner that he is the only son of late Sriram Anjamma and Sriram Ramalingeswara Rao and his late mother was the absolute owner of the plaint schedule property. It is his case that, as his parents were not blessed with any female child, they brought up the 1st defendant, looked after her studies and also performed her marriage with the 2nd defendant who is an employee in Hyderabad. Since the date of her marriage, the 1st

defendant has been residing along with the 2nd defendant at Hyderabad. It is pleaded by the petitioner that though the 1st defendant was brought up by his parents, no adoption has taken place and the 1st defendant was never recognized as adoptive daughter of his parents Sriram Anjamma and Sriram Ramalingeswara Rao.

4. It is stated that, during the lifetime of his mother, when she seriously fell sick in the year 1995, she was admitted in a hospital at Hyderabad for treatment and the 1st defendant was assisting her. At that stage, the defendants promised to shift their place of residence from Hyderabad to Vijayawada and they assured that they would look after the welfare of his mother and asked her to settle some property in favour of the 1st defendant, as such, the late mother of the petitioner Sriram Anjamma executed Will on 30.10.1995 bequeathing the plaint scheduled property in favour of the 1st defendant after her lifetime by reserving her right to alter or cancel the will during her lifetime and the same is registered as document No.481 of 1995 on the file of the District Registrar, Vijayawada; though the mother of the petitioner has executed the Will dated 30.10.1995, the plaint schedule property continued in the possession of his family. It is alleged that, after execution of Will dated 30.10.1995 by his mother, who was ill, when the defendants did not shift their residence to Vijayawada, as

promised by them, the mother of the petitioner executed another notarized will and bequeathed the entire property including the plaint schedule property to him by cancelling the earlier registered Will dated 30.10.1995, as her last testament and the same was communicated to the defendants. It is further pleaded that in spite of his succeeding to the property as per the Will dated 05.08.2012 executed by his late mother in his favour and, further, after the death of his mother on 11.02.2014, defendants were interfering with the possession of the petitioner and also trying to fabricate some false documents to claim rights and possession over the plaint schedule property. It is further pleaded that, on 30.07.2014, at about 10.00 p.m., defendants came to the plaint schedule property and made big *galata*, claiming share in the plaint schedule property. The petitioner claimed the relief of declaration of title and injunction in the suit and filed application – I.A.No.357 of 2014 under Order 39 Rules 1 and 2 read with Section 151 CPC to restrain the defendants from interfering with his possession and enjoyment as lawful owner of the plaint schedule property.

5. Defendants filed counter, agreeing the relationship of the parties and denying that the petitioner is in possession of the plaint schedule property. It is stated that defendants 1 and 2 had been residing in the property and no notice was given before filing of the suit by the

petitioner. They claim their right and possession pursuant to the registered Will dated 13.10.1995 executed by the petitioner's mother late Sriram Anjamma.

6. The learned VII Addl. District & Sessions Judge, Vijayawada, by considering the documentary evidence on record, allowed the I.A., by the impugned order and decree dated 11.03.2015. As against the same, the defendants filed this appeal.

7. Heard Sri T.S. Rayalu, learned counsel for the defendants and Sri M. Karibasaiah, learned counsel for the petitioner.

8. In this appeal, it is contended by the learned counsel for the defendants that in spite of the fact that the defendants are residing in the property devolved upon them pursuant to the registered Will executed in the year 1995, the trial court failed to consider the same and erroneously allowed the I.A., filed by the petitioner. It is further contended that the subsequent will claimed by the petitioner is not a genuine one.

9. On the other hand, it is submitted by the learned counsel for the petitioner that petitioner is the only son of late Sriram Anjamma and Sriram Ramalingeswara Rao. It is further submitted that, while it is true that there was earlier will executed in favour of the defendants on 30.10.1995, but, lifetime interest was retained by the mother of the petitioner Sriram Anjamma and as the

defendants failed to shift their family from Hyderabad to Vijayawda to assist the late mother of the petitioner during her lifetime as promised, subsequent Will was executed by her on 05.08.2012 in favour of the petitioner. It is further submitted that, at no point of time, defendants were given possession of the plaint schedule property and only petitioner continued in possession.

10. With regard to the genuineness of the subsequent Will dated 05.08.2012, finding is required to be recorded, after considering the evidence to be let in by the parties in the suit in O.S.No.326 of 2014. So far as I.A.No.357 is concerned, it is to be noted that it is filed under Order 39 Rules 1 and 2 for grant of injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaint schedule property. It is further to be noted that petitioner is the only issue of his parents late Sriram Anjamma and Sriram Ramalingeswara Rao. It is the specific case of the petitioner that though there was earlier Will in the year 1995, registered in favour of the defendants, but, subsequently, as they failed to shift from Hyderabad to Vijayawda, to assist his late mother, she has executed further Will in his favour on 05.08.2012 and the same is her last testament. So far as possession aspect is concerned, it is the specific case of the petitioner that the house property was in his possession only and to prove the same, documentary evidence, i.e., tax receipts

issued on his name in respect of the plaint schedule property by the Municipal Corporation of Vijayawada are filed. Added to the same, it is also the case of the petitioner that he has filed counterfoils of the rent receipts issued to the tenants. Further, it is his plea that the defendants have come to the plaint schedule property at about 10.00 pm on 30.07.2014 and made *galata* claiming possession and rights over the plaint schedule property. A third party affidavit filed on behalf of the petitioner also supports his case. In view of the documentary evidence on record and, further, in the absence of any other evidence from the side of the defendants to show that, at any point of time, they were given possession of the plaint schedule property, we are of the considered view that the court below has rightly considered the documentary evidence on record and recorded finding that, prima facie, petitioner proved his case for allowing I.A.No.357 of 2014. In that view of the matter, we do not find any ground to interfere with the order and decree dated 11.03.2015 passed in I.A.No.357 of 2014.

11. Civil Miscellaneous Appeal is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in this C.M.A., stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

22nd June 2015
MRR