

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

MONDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.5103 of 2014

BETWEEN

Metla Santha Kumari and others

... PETITIONERS

AND

Tummala Sambaiah and others

...RESPONDENTS

The Court made the following:

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ORDER:

Plaintiffs in the suit viz., O.S.No.92 of 2011 on the file of Junior Civil Judge, Parchur are the petitioners in this revision.

2. Petitioners/plaintiffs filed the aforesaid suit for injunction against the respondents herein alleging that their paternal aunt Gannamaneni Subbamma, W/o. Gopalu @ Gopalam was the absolute owner of the plaint schedule land along with other properties and that she was in possession and enjoyment and was issued title deeds and pattadar passbooks by the revenue authorities. It is alleged that she executed a registered Will dated 26.04.1993, in favour of her brother Metla Kondaiah. The said Subbamma died on 24.11.2008 and since then the legatee under the Will Metla Kondaiah, who came in possession is alleged to have paid the land revenue also. However, said Kondaiah also died on 12.01.2009 leaving behind him his wife,

first plaintiff and children, who are shown as defendant Nos.2 to 4. The respondents, who allegedly have no right and title, have threatened the plaintiffs by issuing a legal notice dated 26.07.2010 stating that the Tahsildar had already issued pattadar passbooks and title deeds to petitioner No.1. However, on account of the threats alleged by the defendants, the present suit came to be filed. Petitioners also sought an interim injunction in I.A.No.481 of 2011 and by order of the trial court dated 16.11.2011, ad interim injunction was granted.

Thereafter, the respondents appeared to have filed a counter and they also filed a written statement. In their pleadings they have relied upon a crucial document viz., registered deed of maintenance dated 23.04.1965 stated to have been executed by the said Gopalam in favour of his wife Subbamma, whereunder he gave Ac.1-50 cents in survey No.249/G and F of Punuru village to G. Subbamma with absolute rights and another Ac.1-48 cents in survey No.249/G and F creating life interest in the said Subbamma and vested remainder in himself. To the extent of said Ac.1-48 cents, therefore, it is the specific case of the respondents that Subbamma had only life interest and no absolute ownership rights are vested in her so as to enable her to alienate the said property. It is also alleged that by a registered settlement deed dated 09.06.1965, Gopalam executed a settlement in favour of Tummala Seetaramamma reserving himself right of life interest and creating vested remainder in the said Seetaramamma. Later the said Gopalam died and the said Seetaramamma took possession of the properties. She is alleged to have executed a Will dated 21.06.1985 bequeathing all her properties in favour of her adopted son Sambaiah, who is respondent No.1. The said Seetharamamma died on 16.07.1985 and respondent No.1 became the absolute owner, who also claims to be in possession and cultivating the lands as absolute owner. Thus, it is specifically alleged by the respondents that Subbamma had no right to convey the property either to Kondaiah or others in any other manner as she had only life interest.

The trial court considered the aforesaid pleadings of the parties while considering the application for injunction and found that admittedly

Subbamma was given the lands by Gopalam under registered maintenance deed, Ex.R1 and that she executed a Will-Ex.P1 in favour of Kondaiah. The trial court also held that whether Subbamma's right enlarges into an absolute right and whether her Will Ex.P1 is genuine and lawful, are matters required to be decided in the suit. The trial court, therefore, after taking into consideration the title deeds and pattadar passbooks, Exs.P5 and P6 respectively granted to Subbamma and the tax receipts Ex.P4 in favour of legal representative of Late Kondaiah, came to the conclusion that *prima facie* possession and title having been proved by the petitioner and accordingly granted interim injunction pending suit by order, dated 19.06.2012, and thereby, the *ex parte* injunction dated 16.11.2011 was made absolute.

Aggrieved thereby, respondents preferred C.M.A.No.6 of 2012 on the file of Senior Civil Judge, Parachur, which has since been allowed under the impugned order, dated 09.12.2014.

3. Questioning the same, the present revision is preferred by the petitioners, who are respondents in the C.M.A.

4. On 31.12.2014 when the revision came up for hearing, this court while issuing notice on admission, granted an order of interim injunction to the petitioners, keeping in mind that from 16.11.2011 onwards, petitioners were protected by the order of interim injunction till the impugned appellate order was passed on 09.12.2014. Now the respondents are represented by Mr. D. Krishna Murthy, learned counsel. Accordingly, I have heard learned counsel for the petitioners and learned counsel for the respondents.

5. Learned counsel for the petitioners submits that the lower appellate court has erroneously vacated the injunction without taking into consideration Exs.P5, P6 and P4, which were rightly appreciated by the trial court. He also points out that the lower appellate court erred in holding that since the title claimed by the petitioners was seriously contested, the Court below ought not to have followed the principle that title follows possession and on the ground that petitioners are not having any revenue record in their name to

prove the possession, neither *prima facie* case nor balance of convenience was found in favour of the petitioners. Learned counsel submits that the approach adopted by the lower appellate court is wholly incorrect inasmuch as the property admittedly devolve upon Subbamma through the admitted owner Gopalam and unless the respondents displaces the title flown to Subbamma, it cannot be said that there is no *prima facie* title in favour of petitioners. While learned counsel accepts that Subbamma got the property under maintenance deed, Ex.R1, he places strong reliance upon the commentaries on Hindu Law by Mulla 21st Edition that even if the limited estate is acquired by the widow after the commencement of the Hindu Succession Act, the same gets enlarged in view of the decision of the Supreme Court in **SADHU SINGH v. GURDWARA SAHIB NARIKE**^[1].

6. On the other hand, Mr. D. Krishna Murthy, learned counsel for respondents, submits that plaintiffs are guilty of willful suppression, as they have not disclosed the deed of maintenance in their pleadings and have pleaded as if Subbamma was the absolute owner. In the present suit for injunction, therefore, the plaintiffs have come to the court with unclean hands and are guilty of suppression of facts and ought not to have been extended equitable relief. Learned counsel also submits that if a male Hindu dies, after the commencement of the Hindu Succession Act, Section 14(1) would not aid the petitioners, as the right of maintenance granted to Subbamma under registered maintenance deed on 23.04.1965 does not get enlarged into an absolute right. Learned counsel further submits that the lower appellate court has rightly appreciated the legal position and the order of the lower appellate court does not deserve any interference.

7. As is evident from the above, the nature of right earmarked into the schedule property, after the demise of admitted owner Gopalam, is required to be agitated based upon the admitted documents exhibited by the parties viz., Ex.R1 registered maintenance deed vis-à-vis Ex.R2 registered settlement deed on 09.06.1965 executed by Gopalam in favour of T. Seetharamamma has to be appreciated with Ex.R4 Will executed by T.

Seetharamamma dated 21.06.1985.

Apart from the said competing Wills, the maintenance deed and the settlement deed in favour Subbamma and Seetaramamma vis-à-vis the provisions of Hindu Succession Act are, therefore, required to be decided.

8. No doubt the suit is merely for perpetual injunction and in the controversy of this type, such crucial questions can at best be decided incidentally, as the suit in question is not a suit for declaration of title. In view of questions of law involved, the petitioners ought to have filed a comprehensive suit. However, the questions of *prima facie* title and balance of convenience would, therefore, depend upon the findings on the crucial questions in the suit. Hence, at this interlocutory stage, it is neither desirable nor proper to record any such finding on the said contested legal position.

9. Petitioners claim possession through Subbamma and they have exhibited documents viz., title deed, pattadar passbook Exs.P5 and P6 issued in favour of Subbamma and Ex.P4 two cist receipts dated 02.06.2010 in favour of petitioner No.1. The respondents, on the contrary, have not filed any revenue record. The preponderance of probabilities, being in favour of petitioners and *prima facie* case based on the aforesaid documents coupled with the notice issued by the petitioners Ex.P7 dated 26.07.2010 asserting title and possession for the suit schedule property, therefore, substantiates the case of the petitioners. In addition to that, the petitioners are protected by an order of temporary injunction right from 16.11.2011, which was briefly disrupted only when the lower appellate court passed the impugned order dated 09.12.2014 and again this court continued injunction in favour of petitioners on 31.12.2014 onwards. Hence, in my view, the said injunction in favour of petitioners on 31.12.2014 onwards is required to be continued pending the suit keeping in view the facts and circumstances of the case.

The civil revision petition is, accordingly, allowed and the order of the lower appellate court is set aside. However, the trial court shall endeavour to decide the suit expeditiously within a period of three (3) months of receipt of

this order, as the pleadings are already completed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

February 16, 2015
LMV

VILAS V. AFZULPURKAR, J

[\[1\]](#) AIR 2006 SC 3282