

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.447 of 2012

AND

TRANSFER CIVIL MISCELLANEOUS APPEAL No.921 of 2013

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COMMON JUDGMENT:-

These two Civil Miscellaneous Appeals arise out of the common order dated 08.02.2012 of the learned Principal Senior Civil Judge, Kovvur of West Godavari District passed in I.A.No.1152 of 2007 in O.S.No.197 of 2007 and I.A.No.907 of 2007 in O.S.No.148 of 2007. The unsuccessful petitioners in the said two interlocutory applications are the appellants in both these appeals. Though the two Civil Miscellaneous Appeals arose out of a common order, the Transfer CMA No.921 of 2013 was originally filed on the file of the Court of Additional District Judge, Kovvur on the point of jurisdiction. However, as the other appeal (CMA No.447 of 2012) is filed before this court on the point of jurisdiction, the Transfer CMA No.921 of 2013 was brought to the file of this Court for consolidation and disposal by this Court. Accordingly, these two appeals are being disposed of by this common order.

2. I have heard the submissions of the learned counsel for the parties. I have perused the material record.

3. The introductory facts are as follows:-

The appellants in CMA No.447 of 2012 brought the suit in O.S.No.197 of 2007 against the appellant in Transfer CMA No.921 of 2013 and five others for declaration of title in respect of Ac.19.30 cents of land in R.S.No.455 (Ac.21.40 cents as per the documents) out of Ac.135.86 cents more fully described in the schedule annexed to the plaint. Along with the said suit, the said plaintiffs had filed an interlocutory application in I.A.No.1152 of 2007 for grant of temporary injunction restraining the defendants therein, their men, agents or their representatives from interfering with the plaintiffs' peaceful possession and enjoyment over the plaint schedule property and also passage leading into the plaint schedule property,

pending final disposal the suit. The first defendant therein had filed a counter affidavit and resisted the said application. The said first defendant in the aforementioned suit, i.e., the appellant in Transfer CMA No.921 of 2013 brought the other suit in O.S.No.148 of 2007 against the defendants, (i.e., the appellants 1 to 3 in CMA No.447 of 2012) for grant of perpetual injunction in respect of Ac.19.00 cents of land in R.S.No.455 of Yarnagudem village more fully described in the schedule annexed to the plaint in the said suit. In the said suit, an interlocutory application in I.A.No.907 of 2007 was filed for temporary injunction to restrain the defendants therein, their men and supporters from interfering with the said plaintiff's possession and enjoyment of the above said property, pending final disposal of the suit. That application was resisted by defendants 1 to 3/ appellants 1 to 3 in CMA No.447 of 2012. As the trial Court is of the view that the subject matter involved in both the interlocutory applications is one and the same, it had disposed of both the interlocutory applications by the common order, which is impugned in these appeals. At the time of enquiry, no oral evidence has been adduced on either side. However, exhibits A1 to A55 were marked on behalf of the petitioners/plaintiffs i.e., the appellants in CMA 447 of 2012 and exhibits B1 to B59 were marked on behalf of the defendants/respondents in the said CMA. On merits, the trial Court had dismissed both the applications. Therefore, the unsuccessful plaintiffs/petitioners in I.A.No.1152 of 2007 in O.S.No.197 of 2007 and the unsuccessful plaintiff/petitioner in I.A.No.907 of 2007 in O.S.No.148 of 2007 had preferred these two appeals.

4. For the sake of convenience, the parties in these two appeals shall hereinafter be referred to as arrayed in I.A.No.1152 of 2007 i.e., in the suit in O.S.No.197 of 2007. To be precise, the appellants in C.M.A No.447 of 2012 shall be referred to as the plaintiffs and the appellant in Transfer CMA and his family members shall be referred to as the defendants.

5. The case of the plaintiffs, in brief, is this: "The second plaintiff is the wife of the first plaintiff. The third plaintiff is the daughter of plaintiffs 1 and 2. The defendants 2 to 4 are the undivided sons of the first defendant. The fifth defendant is the wife of the first defendant; and, the sixth defendant is the wife of the second defendant. All the defendants constitute a joint family. The suit lands and the total extent of about 200

acres are situated in Yernagudem village of Devarapalli Mandal, which is formerly an Estate village. The said lands were acquired long back by the ancestors of Mantena Bhavaraju's family and they have been in possession and enjoyment of the unsurveyed Estate lands covered by A1 to A5 Estates. Finally, Mantena Bhavaraju's family had sold away, long back about 50 acres out of 200 acres. The remaining 150 acres have been in possession and enjoyment of Mantena family along with another extent of about Ac.21.20 cents under different RS numbers. Thus, a total extent of Ac.171.20 cents is being enjoyed by Mantena Bhavaraju and his three brothers and mother Surayamma. While enjoying the said land, the Mantena family people sold about Ac.30.00 cents of land on the Western side to Nadella Anantha Padmanabha Murthy in or about 1946 and another extent of Ac.21.40 cents on its East to the 1st plaintiff under a registered sale deed dated 22.09.1958. They had delivered symbolic possession to the 1st plaintiff and it was an undivided extent of land by the side of Anantha Padmanabha Murthy's land. So, excluding these two extents, the Mantena family had been in possession and enjoyment of about Ac.98.00 cents of unsurveyed land, which is on the Eastern side of the 1st plaintiff's land of Ac.21.40 cents. While so, the Mantena people had sold about Ac.26.00 cents of land on the Eastern side of their remaining Ac.98.00 cents of land. Therefore, Mantena family was having an extent of about Ac.72.00 cents of land by the year 1975 to the East of the 1st plaintiff's land. Due to the advent of the Land Ceiling Act, there was a tentative division of the properties already alienated and retained by the Mantena family. Thus, by the year 1975, in the extreme Western side, Nadella Anantha Padmanabha Murthy was having Ac.30.00 cents and on its East, the 1st plaintiff was having his Ac.21.40 cents of land and on the East of it, there was Ac.72.00 cents of land belonging to Mantena family after excluding the Eastern side land of Ac.26.00 cents alienated to Nidadavolu village people. A Land Ceiling declaration was submitted by Mantena family people; and, in those land ceiling proceedings, as they were found to be in possession of excess extent of about Ac.8.95 cents of land, the Mantena family people had left the said extent of Ac.8.95 cents of land on their extreme Western side of Ac.72.00 cents, i.e., on the East of the 1st plaintiffs land of Ac.21.40 cents. The Government had taken possession of the said excess land under the Land Ceiling Act and distributed the same in extents of Ac.0.80 cents and odd each to eleven landless poor persons. Thus, the land ceiling land in an extent of Ac.8.95 cents is on the East of the 1st plaintiff's land, which was purchased under

the registered sale deed of the year 1958. Later, Mantena people had sold in bits some extents of land situate on the East of the land ceiling land to the 1st defendant's family under about 12 sale deeds starting from December, 1997 to March, 1998; the said deeds were executed in regard to their extent of Ac.62.00 cents and the 1st defendant and his family members were put in possession of the same. The Southern boundary of the total/entire extent of land is the Tyajampudi village Ava Cheruvu limits. On the North of the total land, there is Murugu bodi. The total extent of Ac.150.00 was surveyed after the abolition of Estates in the year 1959-60 and it was found to be Ac.135.86 cents with R.S.No.455. In the total extent narrated above, the 1st plaintiff, one Nadella Anantha Padmanabha Murthy and Nidadavolu people and later the 1st defendant's family are having lands. Thus, the land in R.S.No.455 is found to be Ac.135.86 cents after the survey. The old Estate numbers correlate to the R.S.No.455 only and the 1st plaintiff purchased the land in R.S.No.455 only from Mantena people. The survey, though started in the year 1958, was not finalized till 1961 and 1962 and the correct RS numbers were not known definitely; and so, it so happened that instead of mentioning R.S.No.455, by inadvertent mistake, R.S.No.456 was mentioned in the sale deed dated 22.09.1958 of the 1st plaintiff. But, the records, viz., RSR, Fair Adangal, ROR Act proceedings, Pattadar pass books etcetera would all clearly show that the land of the 1st plaintiff is in R.S.No.455 and that he is paying taxes in respect of that land only and that for the last 50 years, he has been in possession of that land and paying taxes. So, the mentioning of RS No.456 in the sale deed dated 22.09.1958 is an inadvertent mistake. R.S.No.456 old numbers are not A1, A2, A3 but some other numbers; and the said lands are owned by Narahariseti people as per the RSR correlation document. Out of his land of Ac.21.40 cents, the 1st plaintiff gave an extent of 12.40 cents to his wife, i.e., the 2nd plaintiff; and, an extent of Ac.9.00 cents to his daughter/the 3rd plaintiff. The Government have granted pattadar pass books to the plaintiffs 2 and 3 and they have been paying land revenue for the said lands. The total land of Ac.21.40 cents is being cultivated with sugarcane and other crops under the management of the 1st plaintiff. Nadella Anantha Padmanabha Murthy had sold Ac.30.00 cents of land under three registered sale deeds in the year 1961; he had sold an extent of Ac.19.00 cents in favour of Namburi Bangarraju; an extent of Ac.5.00 cents on its East in favour of Pericherla Somaraju; and an extent of Ac.6.00

cents on further East in favour of Pericherla Venkataraju. The land sold to Pericherla Venkataraju is on the West of the plaintiffs' land. Pericherla Venkataraju had executed a document for his land of Ac.6.00 cents in favour of his wife Pericherla Satyavathi. Thus, the boundaries of the 1st plaintiff's land of Ac.21.40 cents are East – land ceiling land left by Mantena people; South – Tyajampudi Ava tank; West – land of Pericherla Satyavathi; and North – Murugu bodi. The land of the 1st defendant's family, which is Ac.62.00 cents, is on the East of the land ceiling land. Thus, there is no connection between the land of the 1st defendant's family and the 1st plaintiff's family. While so, the defendants had tried to excavate fish tanks in their Ac.62.00 cents of land and also in the land ceiling land and in fact, dug some tanks also. As the lands are essentially agricultural lands and as the digging of tanks was found to be objectionable, the Pollution Control Board and the Environmental department took objection for digging the fish tanks. Hence, the defendants 1 to 6 had filed a writ petition before this Court in W.P.No.3104 of 2001 and sought stay against the Government. No orders were granted in their favour by this Court. Subsequently, the said writ petition was dismissed along with a batch of writ petitions. In the said writ petition, the 1st defendant had clearly stated that by the year 2001, he has got Ac.62.00 cents of land in R.S.No.455 and the said land is covered by about 12 sale deeds as already stated; and, out of those sale deeds, the sale deed dated 31.12.1997 and 20.03.1998 are a part. The crucial document dated 31.12.1997 with document No.2105/97 is the document in respect of the land in an extent of Ac.6.66 cents touching the land ceiling land on the East. The remaining land in Ac.62.00 cents is to its' further East. So, the document No.2105/97, wherein it is stated that on the West of the land covered by the said document, there is land ceiling land given by the Mantena family to the Government in an extent of Ac.8.95 cents, clinches the issue. Thus, from the documents of the 1st defendant himself, it is clear that there is no other land belonging to anybody between the land ceiling land and his land purchased on 31.12.1997 from Mantena people. While so, the 1st defendant had tried to encroach upon the neighbouring properties including the land ceiling land. Therefore, the 1st plaintiff wanted to take steps to have specific demarcation of his land in an extent of Ac.21.40 cents in the FMB by getting the land sub-divided and to have the same reflected in the revenue records also; and hence, sub division was proposed. When the 1st plaintiff had approached the Joint Collector, West Godavari, he had directed to survey the land covered by R.s.No.455

and sub-divide the plots as owned by the respective owners. Thus, in the year 2001, the surveyor by name Chalapathi Rao was directed by the Joint Collector of Eluru to measure the total land covered by R.S.No.455 and sub-divide the land as owned and possessed by different owners. The said surveyor, since then, has been giving notices to the 1st plaintiff and to his family and also to the 1st defendant and his family and also to the Western owners, i.e., Pericherla and Namburi people. But, the 1st defendant did not cooperate for survey in spite of the surveyor issuing notices and he is prolonging the matter. Thereupon, after a lot of pressure from the 1st plaintiff, the surveyor, on the intervention of the higher authorities, had surveyed the land in the presence of the 1st defendant and the 1st plaintiff and all other owners of lands in R.S.No.455 and had prepared a sketch on 14.05.2002 with the help of FMB. The said sketch was verified and initialed by the MRO. The copies of the same were obtained by the plaintiffs for the purpose of obtaining the pattadar passbooks. Thereupon, the pattadar passbooks were issued to the plaintiffs 2 and 3. Survey could not be completed due to the influence used by the 1st defendant and the matter was dragged on for some years. When the 1st defendant is proclaiming to stall the surveyor's notice dated 22.02.2007 for completing the work, the 1st plaintiff and the plaintiffs 2 and 3 had filed caveats before this Court and those caveats were served on the 1st defendant and his people before March, 2007. The 1st defendant thought that he would not succeed in doing the illegalities and so he had caught hold of the Western owner of the land, Pericherla Satyavathi, who is residing in Rangareddy District of Hyderabad and had obtained some false documents on 12.03.2007, long after the receipt of survey notices and the caveat notices and got the document registered with absolutely false boundary recitals. The actual extent of land owned by Pericherla Satyavathi is only Ac.6.00 cents but the first defendant got it mentioned as Ac.7.00 cents in the registered sale deed that was obtained. When the Eastern boundary is the land of the 1st plaintiff, the 1st defendant got it mentioned as Yasoda's land, which is absolutely wrong. Likewise, the Southern boundary was got wrongly mentioned as his land though the Southern boundary is Tyajampudi Ava tank. The Western boundary is the land of Pericherla Somaraju, who sold it to Namburi Bangaruraju's wife-Surayamma; but, with ulterior motives, he got it falsely and mischievously mentioned as the land ceiling land. Thus, the 1st defendant mischievously wants to show the patta land of Namburi people as land

ceiling land while in fact, the land ceiling land is on the East of the land of the plaintiffs. The 1st defendant is mischievously creating falsehood stating that the land purchased from Pericherla Satyavathi is contiguous to his land of Ac.62.00 cents and had illegally showed the schedule as a single plot in the plaint filed by him in O.S.No.148 of 2007. By producing fabricated and got up documents in his suit, he had obtained injunction order behind the back of the plaintiff; and, the said injunction order was in force till 13.07.2007. The total land of Ac.150.00 cents was measured and it was found to be Ac.135.86 cents only. Each of the owners will have to get respective extents reduced by 10% as measured by the surveyor; for which, the plaintiffs have no objection; and, all the owners have accepted the same except the defendants 1 to 6, who wanted to grab the property of others without having any manner of right or possession. Thus, the plaintiffs, having been in continuous and uninterrupted possession and enjoyment of Ac.21.40 cents right from the year 1958, have perfected their title by adverse possession also against the defendants. The 1st defendant, having suppressed the entire history of the case had illegally and highhandedly filed O.S.No.148 of 2007 on the file of the Court below for an injunction simpliciter with regard to the land on the East of the land ceiling land by fraudulently obtaining a sale deed dated 12.03.2007 after the disputes had arisen. The plaintiffs herein are resisting the said suit of the 1st defendant herein. The plaintiffs were advised to get their rights declared and obtain appropriate orders to protect their interest and possession of the plaint schedule property. Hence, the plaintiffs are constrained to file the present suit and the instant application.”

6. The case of the 1st respondent/1st defendant, in brief, is this: “The material allegations in the plaint in the suit of the plaintiffs are false. The 1st plaintiff had purchased the property under registered sale deed of the year 1958 and since then, he has been in possession and enjoyment of the plaint schedule property and that he gave away his land to his wife and daughter, i.e., the plaintiffs 2 and 3 and that they are also paying taxes to the Government and that the revenue authorities had granted pattadar passbooks to the plaintiffs 2 and 3 in respect of their respective lands in recognition of their title to the properties and that the 1st plaintiff has been raising sugarcane crops and other crops in the said lands are all false and created

allegations. The 1st plaintiff is not claiming title to the plaint schedule property and the plaintiffs 2 and 3 have no title to the property as per the law and even as per their plaint averments. The averment that the plaintiffs have got title to and possession in respect of the land to the West of the alleged land ceiling land is false. The 1st defendant and his family members have got only an extent of Ac.62.00 cents is incorrect. The defendants have got an extent of Ac.74.00 cents having purchased for valuable consideration under different sale deeds. The averment that the land of the defendants is only Ac.57.60 cents after survey is absolutely false. The defendants are *bona fide* purchasers of the land for valuable consideration and are in possession of their respective properties as mentioned in their sale deeds and the plan filed by them with the plaint in their suit in O.S.No.148 of 2007. They are *bona fide* purchasers in exclusive peaceful possession and enjoyment of the entire extent shown in the said plaint plan. After measurement, the extent of land was about Ac.74.00 cents within fixed boundaries as per the report of the revenue authorities. Even as per the report of the revenue authorities, all the defendants are in exclusive and peaceful possession and enjoyment of their respective properties. After purchase of the land, the defendants had formed a big bund of a height of about 12 feet around the entire land in their possession. The bund is of a width of about 40 feet at the bottom and is of a width of about 15 to 18 feet on the top. The said bund is in existence even as on today. The defendants had filed a petition before the trial Court requesting to inspect the nature of the bund formed by them, which will falsify the contentions of the plaintiffs. Since the plaintiffs are not in possession of the land being claimed by them, they cannot seek the relief of temporary injunction. The survey number of the land of the plaintiffs is RS No.456 and not RS No.455 as per the document. The landlords of the plaintiffs are having lands in RS No.455 and RS No.456 also and also in other survey numbers. Under the alleged sale deed, the 1st plaintiff had purchased the land in RS No.456 and other survey numbers but not the land in RS No.455, as claimed. Hence, the plaintiffs have no right to maintain the suit and the interlocutory application for the land in survey No.455. After fixing the bunds, the defendants had converted part of the land into fish tanks to cultivate fish and they are cultivating the remaining agricultural land by raising crops. After purchase of their land, the defendants had developed the land. Prior to the development of the land by the defendants, the entire land remained inundated under water. The defendants got dug up four bore Wells and had obtained electricity service connections. The 1st plaintiff has no land in that locality and as such, the 1st

plaintiff has no right, title and interest to convey the same or deliver possession of the same to the other plaintiffs. The plaintiffs are put to strict proof that the land being claimed by them in their suit is the land within the land in possession of the defendants. There is no mention of material facts as to when the plaintiffs got possession of the land claimed by them in the plaint. The 1st plaintiff is aware that he cannot make any claim based on the alleged sale deed of the year 1958 in his favour, which is a spurious document. However, by influencing the revenue authorities, the pattadar passbooks were obtained for claiming title and possession over the land. Even the said pattadar passbooks which are granted to plaintiffs 2 and 3 cannot create any legal right over the properties mentioned therein. The pattadar passbooks do not divest the title or possession of the defendants over their lands situated within the fixed boundaries and over which the defendants have derived absolute title through the rightful owner. After the lifetime of the life estate holder, the plaintiffs never made any attempt to take possession of the land allegedly purchased under the sale deed of the year 1958. The sale deed of the year 1958 was never acted upon. If the said document were to be true, the 1st plaintiff would have made attempts to get possession of the property as per law. The purchaser of the vested rights and unascertained joint share is under a legal obligation to follow the procedure required under law at appropriate time and within 12 years after the death of the life estate holder to enforce the said deed. Until and unless the sale deed is acted upon, no rights can be enforced based on such a sale deed as per the facts and the law. The plaint is silent on these material aspects. The inaction of the 1st plaintiff proves the fact that the sale deed of the year 1958 was never acted upon. There are no documents of title in respect of the suit land in favour of the 1st defendant. The report submitted on 15.06.2007 by the Mandal Surveyor to the Tahasildar after verification of the ground realities, also proves the fact that the plaintiffs are not in possession of any property on land, muchless the schedule property mentioned in the schedule of their plaint. When the plaintiffs are not in possession, the question of the defendants proclaiming as alleged in the plaint, does not arise at all. The plaint is specifically silent in regard to the material facts. The plaintiffs did not come to the Court with clean hands. The plaintiffs neither have title nor possession over the plaint schedule property. The plaintiffs have no case, much less a *prima facie* case and the balance of convenience is in favour of the defendants. The defendants had raised sugarcane crops of varieties Nos.96, 05,

298 in about Ac.30.00 cents and gave an offer to V.V.S. Sugars, Chagallu for supply of sugarcane to the factory this year also. The other crop raised is 'RATTON' crop. The defendants had raised the sugarcane of variety No.261 in about Ac.1.50 cents and for the same they did not give an offer to the factory. The defendants had filed a writ petition with regard to the fish tanks area only. There is no land on the ground as claimed in the plaint. The authorities identified the land ceiling land to the West of the entire Ac.74.00 cents of land of the defendants. The said records falsify the contention of the plaintiffs. Hence, the application for temporary injunction filed by the plaintiffs may be dismissed and temporary injunction may be granted in favour of the defendants as prayed for in I.A.No.907 of 2007 in O.S.No.148 of 2007 in respect of the land of the defendants.

7. Both the learned counsel had advanced arguments in line with their respective pleadings and the grounds urged in the memoranda of grounds of appeal. I shall advert to the relevant contentions at an appropriate stage.

8. Now the points for determination are:-

1. **Whether the plaintiffs have satisfied the cardinal principles and made out valid and sufficient grounds for grant of temporary injunction as prayed for in I.A.No.1152 of 2007 in O.S.No.197 of 2007?**
2. **Whether the defendants have satisfied the cardinal principles and made out valid and sufficient grounds for grant of temporary injunction as prayed for in I.A.No.907 of 2007 in O.S.No.148 of 2007?**
3. **Whether the common order impugned is liable to be set aside either in whole or in part? What shall be the appropriate order to be made in these two appeals?**
4. **To what relief?**

9. POINTS:

9.1 At the outset, be it noted that as the plaintiffs as well as defendants are seeking temporary injunctions in their respective applications in respect of their respective

properties, the onus of proof is evenly balanced and it is for the plaintiffs and defendants to establish their respective entitlements to the respective reliefs claimed. I have carefully gone through the pleadings, the copies of the documents exhibited and the material record.

9.2 The plaintiffs brought the suit in respect of the land being claimed by them in an extent of Ac.19.30 cents in survey No.455 by virtue of the sale deed dated 22.09.1958, the registration extract of which is exhibited as exhibit A1. The plaintiffs having filed I.A.No.1152 of 2007 are claiming a temporary injunction against the defendants in respect of the said land. On the other hand, the defendants had filed the suit-O.S.No.148 of 2007 and also an interlocutory application in I.A.No.907 of 2007 for grant of a temporary injunction in respect of Ac.19.00 cents covered by three sale deeds, viz, exhibit A15 (=exhibit B36) dated 31.12.1997 for an extent of Ac.6.66 ½ cents; exhibit A16 (exhibit=B46) dated 21.03.1998 for an extent of Ac.5.33 ½ cents; and, exhibit A17 (=exhibit B28) dated 12.03.2007 for an extent of Ac.7.00 cents by giving common boundaries to the said entire extent of Ac.19.00 cents. The plaintiffs who are claiming a temporary injunction in respect of the said Ac.19.30 cents available on ground are *inter alia* contending that the 1st plaintiff had purchased the said land under the document dated 22.09.1958, the registration extract of which is marked as exhibit A1. The said document admittedly is in respect of an extent of Ac.21.40 cents in survey No.456, but the plaintiffs, having restricted the claim to the extent of Ac.19.30 cents available on ground, however, contend that the survey number is wrongly mentioned as RS No.456 instead of RS No.455. The property purchased under exhibit A1 is an undivided share. According to the plaintiffs, the 1st plaintiff, having thus purchased the land of an extent of Ac.21.40 cents under the original of exhibit A1, gave away Ac.12.40 cents to his wife, the second plaintiff, and Ac.9.00 cents to his daughter, the third plaintiff; and that for the said respective lands, they had obtained pattadar passbooks and title deed books; The same are together marked as exhibit A3.

9.3 Since the survey number is mentioned RS No.456 in the document of the 1st plaintiff, which is of the year 1958 and as the said document recitals reveal that the

property purchased therein was an undivided share and that the 1st plaintiff is the vested remainder holder, the defendants would contend that the plaintiffs cannot claim the plaint schedule property is in RS No.455 and that the plaintiffs also cannot claim possession of the land as the plaintiffs could not produce any documents either to show that the original of exhibit A1 of the year 1958 was acted upon or to establish that the possession of the property was obtained by the 1st plaintiff after the death of the life estate holder by having resort to appropriate legal proceedings. In this regard, what is to be noted is that the plaintiffs had explained in their pleadings as to why a wrong survey number has come to be mentioned in the sale deed of the year 1958 even though their land is in survey no.455. The plaintiffs had *inter alia* pleaded that the survey and settlement had started in the year 1958 and that the same was not finalized until after 1961 or 1962 and that the records like re-survey settlement Register (RSR), copy of Fair Adangal, proceedings under ROR Act and pattadar passbooks of the plaintiffs 2 and 3 would also support their case that their land is in Survey No.455. In fact, exhibit A3-the bunch of pattadar passbooks and title deed books on a perusal would show that the land of the plaintiffs is in Survey No.455. Therefore, at this interlocutory stage, it can *prima facie* be accepted that the plaintiffs' land is in Survey No.455. There are also other factors in support of the said claim of the plaintiffs to which this Court shall advert to a little later. Coming to the contention that the 1st plaintiff had not obtained possession of the share of the land purchased by him in the year 1958 and that therefore, the plaintiffs cannot claim possession of the land being claimed by them, what is to be next noted is that there is no dispute *ex facie* that at the time of the advent of the Land Ceiling Act, Mantena family people had submitted land ceiling declarations and that in the land ceiling proceedings, they were found to be having possession of an excess extent of Ac.8.95 cents of land and that for demarcating that excess land ceiling land, there was a tentative division of the remaining land of Mantena family and also the lands of all the owners, who had acquired property which was originally owned by Mantena Bhavaraju's family. Thus, according to the plaintiffs, the land ceiling excess land, which the Mantena family had surrendered to the Government is situated to the East of the plaintiffs' land and that there was a tentative division of lands already alienated and retained by the Mantena family. But for the division of the lands as contended by the plaintiffs, *ex facie*, there would not have been the demarcation of the excess land ceiling land. It is not in dispute that the Government

had taken possession of the said excess land under the Land Ceiling Act and had distributed the same in bits of extents of Ac.0.80 cents and odd each to eleven landless poor persons. Exhibit A22 dated 25.07.2001 is a document which evidences the fact that the 1st defendant and his sons had surrendered the encroached land ceiling land to the MRO. Therefore, there is *prima facie* proof that the excess land ceiling land of an extent of Ac.8.95 cents was demarcated and was taken possession by the Government. The fact that the excess land ceiling land was demarcated is *prima facie* proof that the lands of various land owners in that survey number are tentatively divided as per possession and enjoyment on ground.

9.4 Dealing with the next aspect, it is to be noted that the plaintiffs further contend that by the year 1975, on the extreme Western side Nadella Anantha Padmanabha Murthy was having Ac.0.30 cents and that on its' East, the plaintiffs are having their land and that on the East of their land, there was Ac.0.72 cents of land belonging to Mantena family after excluding the land that was situated on Eastern side and alienated to Nidadavole village people. Mantena people had sold in bits some extents of land to the 1st defendant and his family members under about twelve sale deeds between December 1997 and March 1998. While admitting that the 1st defendant and his family members had purchased properties in RS No.455 under twelve different sale deeds from Mantena family people, the plaintiffs further contend that the entire trouble is only with regard to the fictitious boundaries in the sale deed under exhibit A17, which was obtained by the 1st defendant from Pericherla Satyavathi to grab the land ceiling land in an extent of Ac.8.95 cents which is situate to the East of the plaintiffs' land. The plaintiffs further contend that the land of the 1st defendant's family including the land covered by exhibits A15 and A16 is to the further East of the land ceiling land and that therefore, the lands of the plaintiffs on the one hand and the lands of the defendants on the other are separated by the land ceiling land of an extent of Ac.8.95 cents in between. Dealing now with the claim and contentions of the defendants, let it be noted that the defendants are seeking temporary injunction in their application in respect of Ac.19.00 cents covered by exhibits A15 to A17 stating that the said total extent of land covered by the said three sale deeds is contiguous and is within common boundaries. As already noted, the plaintiffs having disputed the boundaries in exhibit A17 would contend that the said document was obtained by the defendants with incorrect boundaries to grab the land

ceiling land. In view of the rival contentions of the parties to the *lis*, what is required to be examined is the position and situation of the various extents of lands on ground from West to East and *vice versa*.

9.5 In this backdrop, it is necessary to refer to the situation on ground of the lands in the locality as per the documents brought on record. At one point of time in the past, the land in survey No.455 is a very vast extent of land. At one point of time, a total of Ac.150.00 acres in the said survey number was originally owned by Mantena family. The defendants claim that they had purchased about Ac.70.00 cents of land from Mantena family in the names of the members of the family over the past several years. However, the claim of the defendants in the present *lis* is confined to Ac.19.00 cents within common boundaries covered by the three sale deeds viz., exhibits A15 to A17. Admittedly, Ac.8.95 cents of land was surrendered to the Government by Mantena family under the Land Ceiling law and the Government, in turn, had assigned the said excess land ceiling land in different bits to the landless poor persons. Exhibit A23 prepared by the Mandal Surveyor and signed by the Mandal Revenue Officer, Devarapalli Mandal and the plan annexed to the said document on a perusal would show the on ground situation of the lands of the registered land holders of the lands in RS No.455 of Yarnagudem village, Devarapalli Mandal from West to East. At this interlocutory stage, subject to the final decision in the two suits on merits, this Court is of the well-considered view, that the official and public documents and registered sale deeds, which are having considerable probative value, can be examined and considered. The said document with the plan (exhibit A23) on a plain perusal would show that there is a reduced extent of Ac.135.85 cents of land actually on ground though the total extent of land in RS No.455 as per the documents and claims of the landholders and parties is Ac.150.96 cents. This exhibit A23 is the land owners list with plan prepared after the survey was done by the Mandal Surveyor. The same was signed by the Mandal Revenue Officer, as already noted. This document would make it manifest the following aspects: "To the extreme West, the land of Namburi people in an extent of about Ac.19.00 acres is situate. To the immediate East of it, the land in an extent of Ac.6.30 cents of Pericherla people is situate. To the further East, a small murugu bodi in an extent of Ac.0.80 cents and the land of the present plaintiffs in Ac.19.30 cents is situate. To the East of the plaintiffs' land, the land ceiling excess land in an extent of Ac.8.95

cents is situate. To the further East of the said land ceiling land, the land of the defendants in an extent of Ac.55.80 cents covered by 12 sale deeds is situate. To the further East of the said land of the defendants, the land of Nidadavolu people in an extent of Ac.22.91 cents is situate. The Eastern most piece of land is in an extent of Ac.1.80 cents is of M.Suryanarayana and others.” This position/alignment of the respective lands of the respective owners from West to East as was shown in exhibit A23 with its annexed plan, in the well-considered view of this Court, *prima facie* establishes that there is land ceiling land of an extent of Ac.8.95 cents in between the land of the plaintiffs in an extent of Ac.19.30 cents and the land of the defendants in an extent of Ac.55.80 cents on ground. This document also *prima facie* establishes that the plaintiffs are having land in RS No.455 by virtue of the document no.2805 of 1958 and not in RS No.456. To put it differently, this document also establishes the case of the plaintiffs that their land is to the West of the land ceiling excess land and that Pericherla Satyavathi is having land to the further West of the plaintiffs’ land and that Pericherla Satyavathi’s land is not adjacent to the land ceiling land. *Per contra*, the defendants contend that Pericherla Satyavathi’s land is adjacent to their land and that the land purchased by them from Pericherla Satyavathi under exhibit A17 is contiguous being adjacent to their land purchased under exhibits A15 and A16 from Mantena people. The defendants in this *lis* are not claiming any relief in respect of their entire extent of land. Be it stated, at the cost of repetition, that the claim of the defendants for the relief of temporary injunction is confined to Ac.19.00 cents of land covered under exhibit A15 to A17. Since the defendants have purchased the properties under twelve different sale deeds, one of the sale deeds, i.e., the sale deed in respect of the Western most piece of the land purchased by the defendants from Mantena family can be considered as a crucial document. The copy of the said decisive document dated 31.12.1997 of the defendants, which was executed by Mantena Bhavaraju in favour of the 1st defendant, is exhibited as exhibit A15. This document is in respect of a land in an extent of Ac.6.66 ½ cents of land within the following boundaries: East: Vendors land; South: Village boundary; West: land ceiling land; and North: murugu bodi (drain). Therefore, the Western boundary of this document would disclose that to the West of the lands purchased from Mantena family by the family of the defendants, the land ceiling land is situate and not that of Pericherla Satyavathi. Thus, the document of the 1st defendant itself does not support his case and the recitals of boundaries in exhibit A15 *prima facie* lay bare the falsity of the claim of the

defendants.

9.6 Adverting to the contentions of the plaintiffs that the 1st defendant had obtained the document from Pericherla Satyavathi mentioning wrong boundaries to grab the land ceiling land, it is necessary to note that the copy of the said document executed by Pericherla Satyavathi in favour of the 1st defendant is exhibited as exhibit A17. The boundaries of the land therein are as follows:- East: Koppiseti Yashoda's land; South: Koppiseti Satyanarayana's (1st defendant) land; West: Land ceiling land; and North: Karumanchi's land purchased by Vaddi Venkanna and others. Thus, in this document also, the Western boundary of Pericherla Satyavathi's land is shown as land ceiling land, whereas exhibit A15 also shows that its Western boundary is the land ceiling land. Further, as already noted, exhibit A23 discloses that to the West of Pericherla family's land, the land of Namburi people is situate and to the East of Pericherla Satyavathi's land, the land of the plaintiffs is situate and to the East of the land of the plaintiffs, the land ceiling land is situate. Therefore, the different and conflicting boundary recitals mentioned in exhibits A15 and A17, particularly, the Western boundaries of the properties under the said documents, *prima facie* would show that the recitals of the boundaries in exhibit A17 are incorrect. Therefore, the whole controversy, as rightly contended by the learned counsel for the plaintiffs, has arisen after the defendants had obtained a document for an extent of Ac.7.00 cents of land from Pericherla Satyavathi under exhibit A17 by showing the Western boundary of Pericherla Satyavathi's land as land ceiling land. Therefore, a careful and close scrutiny of the material documents *prima facie* would establish that the plaintiffs are having a land of Ac.19.30 cents in RS No.455 and that to the West of the plaintiffs' land, the land of Pericherla Satyavathi is situate and that the said land of Pericherla Satyavathi, which is to the West of the plaintiffs land, was purchased by the 1st defendant under exhibit A17 and that Pericherla Satyavathi's land is not having land ceiling land as a boundary on any side and that the said land ceiling land is situate to the East of the land of the plaintiffs. Therefore, a conclusion *prima facie* can safely be arrived at that the land ceiling excess land is situate in between the land covered by exhibit A15 sale deed of the defendants' family and the land of the plaintiffs. To emphasize, it is necessary to mention that the

Western boundary of the land covered by exhibit A15 is described as land ceiling land. The incorrect recitals of boundaries got made by the 1st defendant in exhibit A17, which are in conflict with the recitals of the boundaries in exhibit A15, *prima facie* would show that the case put forward by the defendants does not find support from their own documents. Having regard to the discussion coupled with reasons, this Court finds that the plaintiffs had satisfied the cardinal principles and had made out valid and sufficient grounds for granting a temporary injunction as prayed for in I.A.No.1152 of 2007 filed in O.S.197 of 2007.

9.7 Coming to the defendants' entitlement to a temporary injunction in respect of Ac.19.00 cents of land covered by exhibits A15 to A17, be it noted that this Court has already examined the boundaries of exhibits A15 to A17 and analyzed the cases of the parties. If one has to go by the boundaries of the properties in the said documents, the defence that the entire Ac.19.00 cents covered by these three documents is one contiguous plot within the boundaries mentioned by the defendants in their pleadings, appears to be *prima facie* incorrect and therefore, deserves no acceptance. Therefore, when *prima facie* the defendants could not establish that the properties covered by exhibits A15 to A17 are situated contiguously and within common boundaries, no temporary injunction can be granted in their favour. Since the defendants having obtained exhibit A17 with incorrect boundaries had wrongly claimed that the land covered by exhibits A15 to A17 is contiguous land within common boundaries and had failed to establish *prima facie* the said plea, it follows that they have no *prima facie* case, which is *sine qua non* and that therefore, the defendants are not entitled to the relief of temporary injunction prayed for in their application, and that the balance of convenience is in favour of the plaintiffs and not in favour of the defendants.

9.8 It is necessary to advert to one more contention advanced by the learned counsel for the defendants. To countenance the contents of exhibit A23 and to get over the vital discrepancies in the boundary recitals of the defendants' documents, the learned counsel for the defendants placed reliance on exhibit B7, the attested copy of the report dated 15.06.2007 submitted by a Surveyor to the MRO, wherein the Surveyor had stated that pursuant to the application of the 2nd plaintiff for patta

sub division, he had been to the locality of the suit schedule lands and that when he had made a request to show the boundaries, the 2nd plaintiff has shown the land of somebody else, i.e., of Koppiseti Satyanarayana and others and that therefore, the contention of the defendants that the plaintiffs are not in possession of any land is having acceptable merit. The Mandal Surveyor who recorded such statement allegedly of the 2nd plaintiff is not competent to record any such statements and the duty that was enjoined upon him is to make a sub-division of the lands in the locality by identifying with reference to the documents of the parties and the revenue records like FMB etcetera. He did not state that the properties cannot be identified even after a survey. Be it noted that under exhibit A23 the property was already demarcated and a list of registered landowners in R.S.No.455 from West to East was already prepared by a competent Mandal Surveyor and the same was signed by the Mandal Revenue Officer. The said document as sought to be contended is not a photostat copy or a document which is inadmissible in evidence. Exhibit A23 on a perusal would show that it is a primary document signed by the Mandal Revenue Officer, Mr.B.V.Ratnam of Devarapalli Mandal and also the Surveyor concerned and to it is annexed a rough sketch of R.S.No.455 prepared as per the registered documents and signed by the Mandal Surveyor. The said sketch is also signed by the said Mandal Revenue Officer, Devarapalli and the Surveyor by name Chalapathi Rao, who had surveyed the lands. Hence, the said document deserves to be given its due weight and it has its own probative value in the facts and circumstances of the case. The very contention of the plaintiffs is that the whole controversy had cropped up only after exhibit A17 was obtained by the 1st defendant from Pericherla Satyavathi with incorrect boundaries and that the said document with incorrect boundaries was obtained to grab the land ceiling excess land surrendered by Mantena family people to the Government. This Court had already taken note of the serious discrepancies in regard to the boundary recitals in exhibit A15 and A17 and recorded a finding supra that the contention of the defendants that the properties covered by exhibits A15 to A17 are contiguous and are within common boundaries is *prima facie* not correct. Therefore, the recitals in exhibit B7 do not advance the defence of the defendants any further when juxtaposed and considered in the light of the other overwhelming documentary evidence having considerable weight and probative value.

10. Before parting with the matter, it is to be noted that the trial Court having analyzed the pleadings and the relevant documents had first held that the documents clearly show that the plaintiffs' land is in R.S.No.455 only and not in R.S.No.456 and that Pericherla Satyavathi has no land on the East of the land ceiling excess land which was surrendered by Mantena family people and that exhibit A15, which is the document of the defendants falsifies their own contentions. On an examination and consideration of the boundaries of the lands as mentioned in exhibits A15 to A17, the Court below had further held that the lands covered by the said documents are not adjacent to each other and that they are located at different places and not side by side and that therefore, the defendants have not correctly shown their land in the schedule of the plaint in the suit filed by them. The court below had also held that there is land ceiling land to the West of the land of the defendants. This Court on examination of material record also found that as per the recitals in exhibit A15, particularly the Western boundary, there is land ceiling land to the West of the land of the defendants. Having regard to the recitals in exhibit A15 to A17, it must be held that the contention of the defendants that the lands covered by the said three documents are contiguous and are within common boundaries cannot be countenanced. Having thus analyzed the contents of the relevant documents, this Court finds that the trial Court is justified in recording the aforementioned findings and also the *prima facie* finding that there is land ceiling excess land between the land of the plaintiffs and the land of the defendants and that therefore, the question of the plaintiffs herein interfering with the possession of the land of the defendants is unbelievable. However, having thus recorded certain findings in favour of the plaintiffs, the trial Court while dismissing the application seeking temporary injunction filed by the defendants had also dismissed the application for temporary injunction filed by the plaintiffs mainly on the ground that under exhibit A1 of the year 1958, the 1st plaintiff had purchased an undivided 1/4th joint share of Bhavaraju and that there is no averment about the date of taking possession from the vendors and that therefore, the plaintiffs also have no *prima facie* case. This Court had already recorded a finding supra that the plaintiffs had *prima facie* established that at the time of land ceiling proceedings there was a tentative division of the properties and that the excess land ceiling land surrendered by the Mantena family was demarcated and the said excess land ceiling land was taken possession by the Government and that that there was also a survey by the Mandal Surveyor as is evident from exhibit A23, where under the lands of the

registered land holders in R.S.No.455 of Yarnagudem village from West to East were delineated and also demarcated. When once the trial Court agreed with the case of the plaintiffs that there is land ceiling land in between the lands of the plaintiffs on the one hand and the lands of the defendants on the other hand, it follows that the court had accepted that the plaintiffs are in possession of the land which is well defined and identified. The Court below had failed to take note of the said decisive and important facts while erroneously refusing to grant a temporary injunction in favour of the plaintiffs and therefore, this Court is of the considered view that the common order of the court below is liable to be set aside insofar as the dismissal of the application for temporary injunction filed by the plaintiffs though it deserves to be confirmed in regard to dismissal of the application for temporary injunction filed by the defendants. On weighing competing possibilities or probabilities of likelihood of injury, i.e., the amount of substantial mischief or injury, which is likely to be caused if injunction is refused and comparing it with that which is likely to be caused to the other side, if the injunction is granted, this Court is satisfied that the balance of convenience is not in favour of the defendants. Viewed thus, this Court finds that the plaintiffs are entitled to temporary injunction as prayed for in their application and that the defendants are not entitled to the temporary injunction as prayed for in their application.

11. Having regard to the reasons, this Court finds that there is acceptable merit in the Civil Miscellaneous Appeal filed by the plaintiffs and the same deserves to be allowed and that the plaintiffs are entitled to a temporary injunction as prayed for against the defendants therein and that the Transfer CMA no.921 of 2013, which is devoid of merit is liable to be dismissed.

12. In the result, Civil Miscellaneous Appeal No.447 of 2012 is allowed and the impugned common order of the trial Court insofar as it related to the dismissal of I.A.No.1152 of 2007 in O.S.No.197 of 2007 is set aside and accordingly, the said application is allowed granting temporary injunction as prayed for in favour of the plaintiffs therein and against the defendants therein. As a sequel, the Transfer CMA 921 of 2013 is dismissed confirming the common orders insofar as it related to the

dismissal of the I.A.No.907 of 2007 in O.S.No.148 of 2007. There shall be no order as to costs. It is needless to observe that since the suits are sufficiently old suits, the trial Court shall decide the suits on merits and in accordance with the procedure established by law as expeditiously as possible, preferably within six months from the date of the receipt of a copy of this common judgment.

Miscellaneous petitions pending, if any, in these appeals shall stand dismissed.

M.Seetharama Murthi, J

30th November, 2015

Note: Issue CC by 04.12.2015

(B/o)

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