

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A.No. 1076 OF 2014

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JUDGMENT: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The unsuccessful petitioner in I.A.No. 1 of 2014 in O.S.No. 866 of 2014 filed the present civil miscellaneous appeal challenging the order dated 07-10-2014 passed by XV Additional District Judge's Court, Ranga Reddy District at L.B. Nagar (for short, 'the trial Court'), whereunder the petition filed by the petitioner under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short, 'C.P.C.') was dismissed.

2. For convenience of reference, the parties to the appeal as ranked in I.A.No. 1 of 2014 in O.S.No. 866 of 2014 before the trial Court will be adopted throughout the judgment.

3. The petitioner filed petition under Order 39, Rules 1 and 2 read with Section 151 of C.P.C., for grant of *interim* injunction restraining the respondents and his men from changing the nature of A, B and C schedule property, alleging that late A.Lakshamma own agricultural land admeasuring Ac. 5.00 guntas in S.Nos. 344 and 345 in Narsingi Village and Ac. 1.33 guntas in S.No. 502 of Manchirevla Village of Ranga Reddy District. The said Lakshamma gifted the agricultural land executing registered gift deed bearing document No. 370 of 1968 dated 14-03-1968 in favour of the petitioner and the respondents in equal shares. The petitioner and the respondents purchased Ac. 11.33 guntas in S.Nos. 344 and 345 of Narsingi and Manchirevla Villages. Thus, the petitioner and the respondents are entitled to equal share both in the gifted property by Lakshamma and the property purchased by them. The Mandal Revenue Officer issued pattedar passbook and title deed in his favour. The schedule property continued to be joint, never partitioned among the petitioner and the respondents till today and the alleged partition never took place. However, there was a proposal in the year 2001 by the 2nd respondent for partition of the schedule property and other properties and the matter was tentatively put in

writing on a document styled as memorandum of family arrangement but no family partition took place by metes and bounds. It is further contended that the 2nd respondent was suffering from delusion that a full-fledged partition of schedule property had taken place and filed caveat No. 368 of 2009 dated 07-03-2009 and another caveat dated 23-06-2014 without any reference to the alleged partition but claimed right in prime portion of the schedule land. The unilateral claim of the 2nd respondent was denied by the petitioner and, later, the matter was referred to a panchayat and he was warned sufficiently.

The 2nd respondent set up plea of partition which never took place dividing the property by metes and bounds. The petitioner demanded for partition of the schedule property but no purpose was served. Hence, she filed the suit for partition. The petitioner further contended that, taking advantage of his possession in part of the premises, the 2nd respondent is trying to destroy nature of the property and change nature of the schedule property so as to deprive the petitioner to claim right in the prime portion of the property. Hence, she filed the present petition to restrain the 2nd respondent and his men from changing or altering physical features of the property during pendency of the suit.

4. The 1st remained *ex parte*.

5. The 2nd respondent filed counter denying material allegations *inter alia* contending that there was partition by metes and bounds and he is raising construction in part of the property allotted to him. Thus, 2nd respondent is in possession and enjoyment of the property since the date of partition. There is a pending litigation between respondent Nos. 2 and 3 in O.S.No. 1559 of 2013 on the file of the Court of VIII Senior Civil Judge, Ranga Reddy District at L.B. Nagar.

It is specifically contended that the petitioner and the respondent have been allotted, as per the plan, the land abutting to the proposed 100 feet main road on western side which is called as Manchirevla Village Road and denied the alleged partition. However, all the three sons at one point of time or other reported that there was a family settlement agreement dated 21-03-2001, which is acted upon, and the same was pleaded in various suits pending between the parties. Thus, there was a partition by metes and bounds and the same was reduced into writing as memorandum of family arrangement. Therefore, question of dividing the property

again does not arise since the petitioner did not dispute the revenue records and physical possession of the petitioner and the respondents. The 2nd respondent specifically pleaded in the caveats about partition, which was reduced into writing styling it as memorandum of family arrangement dated 21-03-2001, and the same was not questioned at any point of time. Thus, there is effective division of property by metes and bounds and the same was acted upon by the parties to the partition and continuing in possession of the same. However, at the instance of the 3rd respondent, the petitioner filed the present suit since the 3rd respondent already failed in his attempt to obtain *interim* relief in O.S.No. 1559 of 2013. The 2nd respondent started construction of a function hall in the schedule property after obtaining necessary permission, which is now almost at the stage of completion; if any *interim* injunction is granted from completing the construction, he will be put to serious loss which will not be compensated by granting pecuniary damages; on the other hand, the petitioner would not sustain any loss; the petitioner had no *prima facie* case and balance of convenience in her favour; consequently, the petition is liable to be dismissed; and prayed for dismissal of the petition.

6. During the course of inquiry, no oral evidence was adduced on either side but marked Exs.P1 to P6 and Exs.R1 to R10 on behalf of the respondents.

7. Upon hearing argument of both the counsel and considering documentary evidence on record, the trial Court concluded that the petitioner had not made out *prima facie* case and she will not sustain irreparable loss much less loss that cannot be compensated by granting pecuniary damages while finding that the 2nd respondent would sustain irreparable loss in case any injunction is granted during pendency of the suit and dismissed the petition.

8. Aggrieved by the order and decree in I.A.No. 1 of 2014 in O.S.No. 866 of 2014, the unsuccessful petitioner before the trial Court preferred the present appeal on various grounds.

9. The main contention of the petitioner in the grounds of appeal is that the petitioner denied the alleged partition in the affidavit filed by her; the 1st respondent did not deny the allegations made in the affidavit by filing any counter; the 3rd respondent supported the contentions of the petitioner; and the 2nd respondent alone disputed the claim of the petitioner pleading that partition was already effected but the trial

Court, basing on the plea of the 2nd respondent and the pleadings in the earlier suit between the 2nd respondent and the 3rd respondent, concluded that there is partition *prima facie*; thereby concluded that the petitioner has no *prima facie* case and balance of convenience is also not her favour while holding that the 2nd respondent will sustain irreparable loss in case any injunction is granted; and this approach of the trial Court is erroneous. It is further contended that the 2nd respondent did not produce the memorandum of family arrangement to substantiate his contention that there was partition among the petitioner and the respondents and believed the contention of the 2nd respondent erroneously. If the affidavits filed in the earlier suits are excluded from consideration, there is absolutely no evidence to establish the partition *prima facie* pleaded by the 2nd respondent but the trial Court erroneously dismissed the petition filed by the petitioner and prayed to allow the appeal setting aside the dismissal order dated 07-10-2014.

10. During the course of argument, Sri V.Venkata Ramana, learned senior counsel for the petitioner, would submit that the 2nd respondent though pleaded that there was partition among the petitioner and the respondents, no piece of paper is produced to substantiate his claim and, until the partition is proved, the property is presumed to be joint but the trial Court, on erroneous appreciation of documentary evidence on record, concluded that the petitioner failed to establish, *prima facie* case, balance of convenience and irreparable loss that would be caused in case no injunction is granted while holding that the 2nd respondent would sustain irreparable loss and thereby the finding of the trial Court is not based on any legal reasoning. Hence, the same is liable to be set aside. Finally, it is contended that, in the absence of proof of partition by metes and bounds, the petitioner and the respondents are entitled to enjoy each and every piece of the schedule property as co-owners and, when one co-owner is causing damage to the property by changing or altering physical features, another co-owner can obtain injunction against the other co-owner subject to establishing the pre-requisites of *prima facie* case, balance of convenience and irreparable loss for grant of temporary injunction during pendency of the suit. The petitioner established her right to claim share in the schedule property and *prima facie* case and balance of convenience are in her favour and that she would sustain irreparable loss in case no injunction is granted. Therefore, the finding of the trial Court is erroneous and prayed to set aside the same allowing this

appeal granting temporary injunction restraining the 2nd respondent and his men from changing or altering physical features of the schedule property.

11. Sri D.Madhava Rao, learned counsel for the 2nd respondent, would contend that the 3rd respondent, who is supporting the petitioner, himself admitted about partition in the earlier litigation between them and even the petitioner also pleaded reducing memorandum of family arrangement into writing in the affidavit filed along with the petition. Therefore, the petitioner is not entitled to claim temporary injunction during pendency of the suit when the partition was already effected by metes and bounds. It is further contended that the 2nd respondent already completed major part of construction obtaining necessary permission from concerned authorities and, in case he is restrained from completing construction, the 2nd respondent would be put to serious loss which cannot be compensated. In those circumstances, the trial Court rightly declined to grant temporary injunction during pendency of the suit restraining the 2nd respondent from altering or changing physical features of the schedule property; that too the petitioner would not suffer any loss much less irreparable loss; and, in those circumstances, she is disentitled to claim temporary injunction.

12. Refuting the contention of learned counsel for the petitioner that the 2nd respondent did not produce memorandum of family arrangement as pleaded in the counter, learned counsel for the 2nd respondent would contend that copy of memorandum of family arrangement is not available with him but produced Photostat copy, which is available with him, in the petition filed under Order 41 Rule 27 of C.P.C. and requested to receive the same as additional evidence and supported the order passed by the trial Court in all respects and prayed to dismiss the appeal confirming the decree and decretal order passed by the trial Court.

13. Considering rival contentions and perusing documentary evidence available on record, the sole point that arises for consideration is:

"Whether the 2nd respondent and his men be restrained from altering or changing physical features of the schedule property during pendency of the suit?"

14. **In Re. Point:**

Admittedly, the property of an extent of Ac. 5.00 guntas in S.Nos. 344 and 345 of Narsingi Village and Ac. 1.33 guntas in S.No. 502 of Manchirevla Village was gifted to the petitioner and the respondents by Lakshamma under gift deed dated 14-03-1968 which is marked as Ex.P1. As the interest of the petitioners and the respondents was not specified in the original of Ex.P1, they are deemed to be joint owners with equal shares. Undisputedly, they also purchased Ac. 11.33 guntas in S.Nos. 344 and 345 of Narsingi Village and S.No. 502 of Manchirevla Village without specifying their interest. Therefore, they are deemed to be joint owners with equal shares. The names of the petitioner and the respondents were mutated in revenue records. However, Exs.P2 to P5 title deeds and pattedar passbooks were issued in the name of Anantha Laxmi for the entire schedule property. Therefore, taking advantage of these documents Exs.P1 to P6, the petitioner would contend that the property is still continuing as joint and, in those circumstances, the 2nd respondent, being co-owner, is not entitled to raise any construction or alter or change the nature of the property during pendency of the suit filed for partition. No doubt, in view of the undisputed facts of executing registered gift deed by Lakshamma and purchase of property by the petitioner and the respondents, they became joint owners till it is partitioned.

15. The specific contention of the 2nd respondent is that the property was already partitioned in the year 2001; reduced the same into writing as memorandum of family arrangement; and, by virtue of the said family arrangement, he became owner of part of the property where he is raising construction. If really there was partition, question of dividing the property again does not arise by filing suit. The main contention of the petitioner is that no partition by metes and bounds was effected. However, the 2nd respondent, who pleaded partition, has to prove partition by metes and bounds by producing satisfactory evidence but, obviously for the reasons best known to him, the 2nd respondent did not produce any piece of paper to prove partition of the schedule property reducing the same into writing styling it as memorandum of family arrangement.

16. The main endeavour of learned counsel for the petitioner is that, in the absence of any documentary proof evidencing partition of the property, the property is presumed to be as joint and, therefore, the petitioner is entitled to claim temporary injunction restraining the 2nd respondent, who is co-owner, from changing or altering

physical features of the property. Learned counsel for the 2nd respondent mainly relied on Exs.R1 and R2 affidavit in I.A.No. 1121 of 2013 in O.S.No. 1559 of 2013 and plaint in O.S.No. 1559 of 2013 respectively to establish partition of the property. In Ex.R1 affidavit filed by the 3rd respondent herein in I.A.No. 1121 of 2013 in O.S.No. 1559 of 2013, the 3rd respondent admitted about acquisition of the property by the petitioner and the respondents jointly by way of gift deed. In para No. 3 of the affidavit, the 3rd respondent pleaded about partition of the property reducing the same into memorandum of family arrangement and the specific admission is extracted hereunder for better appreciation:

"In this backdrop and context I state that, for brevities sake and to avoid any future dispute with regard to our individual holdings I along with the Respondent herein and our eldest brother and also our mother have executed a document styled as a Memorandum of Family Arrangement pursuant to actual division having already taken place, the said Memorandum is dated 21-3-2001 and annexed along with it is a rough sketch plan depicting a common passage 40 feet in width running parallel to all our portions on their northern boundary."

He further admitted that division took place with common consensus. Similarly, in para No. 2 of the plaint in O.S.No. 1559 of 2013, the 3rd respondent herein specifically pleaded about partition of joint family property. In the said suit, the petitioner herein was not arrayed as a party and, therefore, the admission made in the pleadings *i.e.* judicial admission is binding only on the party who made such admission and it cannot be used against a person other than the person who made it in view of Section 21 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872'). Strangely, in para No. 6 of the affidavit filed in I.A.No. 1 of 2014 in O.S.No. 866 of 2014, the petitioner herein specifically contended as follows:

"I further submitted that at one point of time i.e., in the year 2001 there was a proposal by the Second Respondent/Second Defendant to partition the Petition Schedule premises inter-alia all other properties standing in the names of the parties to this Petition and the matter was tentatively put into writing on a document styled as Memorandum of Family Arrangement, it is submitted that upon the suit lands being measured the actual possession of lands in the hand of the parties herein was found to be 27 Acres as opposed to 23.27 Acres and correction of the same is being sought before the RDO, Chevella. It is submitted that in view of these discrepancies in extent the proposal for a full fledged partition was given a go by, by me and the matter has stood thus."

Thereby, the admission of the petitioner about reducing the partition into writing styling it as memorandum of family arrangement supports the contention of

the 2nd respondent. Added to that, pleadings in the earlier suit filed by the 3rd respondent herein in O.S.No. 1559 of 2013 on the file of the Court of VIII Senior Civil Judge, Ranga Reddy District at L.B. Nagar, support the case of the 2nd respondent about division of the property by metes and bounds reducing the same into writing styled it as memorandum of family arrangement. When the petitioner herself admitted about execution of memorandum of family arrangement so also the 3rd respondent in O.S.No. 1559 of 2013, the 2nd respondent need not be compelled to substantiate his claim and even it is difficult for this Court to draw a presumption that the property is continuing as joint in view of the specific admissions.

17. To claim temporary injunction during pendency of the suit, the petitioner has to establish three pre-requisites viz., *prima facie* case, balance of convenience and irreparable loss. If the petitioner failed to establish any one of the requisites, she is disentitled to claim temporary injunction. The trial Court relied on the judgment of Apex court in ***Colgate Palmolive (India) Limited Vs. Hindustan Lever Limited***, wherein it was observed that the other considerations which ought to weigh with Court hearing the application or petition for the grant of injunction are as below:

(i) *Extent of damages being an adequate remedy;*

(ii) *Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefore;*

iii. *The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;*

iv. *No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case the relief being kept flexible;*

v. *The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;*

vi. *Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*

vii. *Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.*

Similarly, the trial Court relied on the judgment of Apex Court in ***Dalpat Kumar and another Vs. Prahlad Singh and others***, wherein the Apex Court,

explaining the scope of material circumstances, observed as under:

"The phrases 'prima facie case', 'balance of convenience' and 'irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience."

No doubt the petitioner has to establish the three pre-requisites, which are *sine qua non*, for grant of temporary injunction as observed by the Apex Court. *Prima facie* case means the petitioner has to make out a strong case to go for trial. In **Kashi Math Samsthan and another Vs. Srimad Sudhindra Thirtha Swamy and another**, the Apex Court, while dealing with Order 39 Rules 1 and 2 of C.P.C., discussed about the requirements for grant of temporary injunction during pendency of a suit and ruled as follows:

"It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted."

Thus, it is the duty of the petitioner to prove that she got prima facie case to go for trial, she will sustain irreparable loss in case no injunction is granted and also establish that balance of convenience is in her favour. If, for any reason, the petitioner failed to prove any one of the requirements, she is disentitled to claim the relief of temporary injunction.

This Court had an occasion to deal with a similar issue in **Yashoda Super Specialty Hospitals, partnership firm, rep. by its partner G.Devendar Rao Vs. Yashoda Medicare and Research Centre (P) Limited, a company registered under the Companies Act, 1956, having its registered office at New Delhi, rep. by its Director and another**, wherein it was held that

"The petitioner must satisfy that there is a serious question to be tried at the hearing and that on facts before it, there is a probability that plaintiff is entitled to relief. When the material available to Court at the hearing of application, must satisfy that success at the trial is probable and impending danger must be eminent and impressive, the Court can grant interim injunction."

In **Allappuzha Municipality Vs. T.J.Paul**, Kerala High Court, giving a

different meaning to the word *prima facie* case, held that

"The Court should consider whether there is a bona fide contention between the parties or a serious question to be tried or there should be a fair and arguable or debatable case for the petitioner to go for trial."

In ***United Commercial Bank Vs. Bank of India***, the Apex Court held that

"No injunction could be granted under Order 39 Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried."

In ***M/s. Julien Educational Trust Vs. Sourendra Kumar Roy and others***, the Supreme Court held as follows:

"We are satisfied from the material on record that a prima facie case has been made out by the appellant Trust as to the agreement for sale, which has to go to trial. Whether there was a concluded contract or not between the appellant Trust and the respondent Nos. 1 to 8 is a matter of evidence and can only be gone into during the trial of the suit. This brings us to the all important question as to whether the balance of convenience and inconvenience lay in favour of the grant of an interim order of injunction in favour of the appellant Trust and as to whether the appellant Trust would suffer irreparable loss and injury, if no such interim order was passed.

We are of the view that this is one such case where an interim order is required to be passed to maintain the status quo of the suit property, during the pendency of the suit for specific performance filed by the appellant Trust, but at the same time appropriate directions should also be given so that the suit is disposed of expeditiously."

In view of the law laid down by Apex Court, this Court and Kerala High Court, the meaning of the word *prima facie* case is a *bona fide* contention between parties or a case to go for trial involving a serious question of controversy between parties or a fair or arguable or debatable case. If there is no such case for the petitioner, the petitioner is not entitled to claim temporary injunction during pendency of the suit.

18. Keeping in mind the meaning of the word *prima facie* case in the various decisions referred *supra*, we must necessarily examine the case of the petitioner. According to the petitioner, there was memorandum of partition specifically referred in para No. 2 of the plaint and affidavit. Thus, the petitioner herself admitted about execution of memorandum of family arrangement. That apart, in the earlier suit filed by the 3rd respondent herein, who is supporting the plaintiff, in Exs.R1 to R4 admitted about execution of memorandum of family arrangement among the parties to the present petition. If really the property was not partitioned among the petitioner

and the respondents, question of reducing the same, recording previous partition, into memorandum of family arrangement does not arise. *Prima facie*, there is any amount of suspicion in the contentions raised by the petitioner that the property is not yet partitioned and continuing as joint property. Therefore, there is no arguable or debatable question during trial. If the petitioner totally denies partition without admitting the memorandum of family arrangement, then it is a question required to be proved by adducing evidence during trial but the petitioner herself pleaded about execution of memorandum of family arrangement under which the property was divided into shares among the petitioner and the respondents. Therefore, the 2nd respondent relied on the same memorandum of family arrangement but not produced before the trial Court. However, a Photostat copy of the same is produced before this Court without obtaining any permission to adduce secondary evidence. Hence, the same cannot be looked into for any purpose. However, judicial admissions made by the petitioner, both in the affidavit filed along with the petition and in the plaint, need no proof in view of Section 58 of the Act of 1872. Hence, we find no arguable or debatable question in the suit or a case to go for trial. Thereby, the petitioner miserably failed to establish that there is an excellent chance of succeeding in the main suit. Therefore, we are of the view that the petitioner failed to establish that there is *prima facie* case for her.

19. The other two requirements for grant of temporary injunction are irreparable loss and balance of convenience. In the present case, the 2nd respondent allegedly raising constructions for function hall in the property allegedly allotted to him and this fact is also not disputed. The suit was filed as early as on 06-08-2014 and, by the time of filing suit, the 2nd respondent started construction in the property allotted to him. The 2nd respondent obtained necessary permission from concerned authorities and started construction. During the course of argument, Sri D.Madhava Rao, learned counsel for the 2nd respondent, contended that the construction is completed to the maximum extent and, in case any temporary injunction is granted restraining the 2nd respondent from completing the construction, he will be put serious loss whereas the petitioner would not sustain any loss even if the construction is completed and that the respondents may claim equities at the time of passing final decree in case the partition pleaded by the 2nd respondent is not accepted and that the petitioner would not sustain any loss much less irreparable

loss which cannot be compensated by granting pecuniary damages. No doubt the suit was filed when the 2nd respondent was making preparations to raise construction and, in fact, the photos taken on 24-06-2014 would go to show that the 2nd respondent raised pillars to some extent up to ground level and the photo dated 09-08-2014 disclosed that some of the pillars were raised to some extent and some pillars are kept intact. The later photo taken on 22-11-2014 shows that the 2nd respondent made necessary arrangements for dumping granite stones for construction. At best, these photographs would establish that the construction was commenced on 24-06-2014 but the trial Court declined to grant *ad interim/ex parte* and even *interim* injunction is also declined to the petitioner upon hearing argument of both the counsel by order under challenge. According to the 2nd respondent, he completed major part of the construction by incurring huge expenditure. It is a common knowledge that, to raise construction, the 2nd respondent would have incurred substantial amount. In case the 2nd respondent is restrained from raising further construction or changing or altering nature of the property, certainly he would be put to irreparable loss much less loss which cannot be compensated by granting pecuniary damages. On the other hand, the petitioner would not sustain any loss even if no injunction is granted. However, the construction, if any, raised is always subject to result of the suit. Therefore, question of the petitioner sustaining irreparable loss is a myth and, thereby, she is disentitled to claim temporary injunction during pendency of the suit.

20. The third requirement for grant of temporary injunction is balance of convenience. Balance of convenience or inconvenience to parties depends upon the circumstances of each case. In the instant case, the total property sought to be partitioned is Ac. 10.01 guntas described in A schedule property, Ac. 10.00 guntas in B schedule and Ac. 3.26 guntas described in C schedule property. If for any reason, the 2nd respondent is raising construction in any one of the schedule properties, no inconvenience would be caused to the petitioner but the 2nd respondent would be put to much inconvenience on account of spending huge amount to raise construction with a *bona fide* belief that the property was allotted to his share under the memorandum of family arrangement as admitted by the petitioner in para No. 2 of the affidavit filed along with the petition so also in para No. 2 of the plaint, which is a judicial admission, which estops the petitioner to contend otherwise in view of

Section 31 of the Act of 1872 and, that apart, judicial admission is the best piece of evidence. Hence, in view of the clear admission made by the petitioner in the plaint as well as in the affidavit filed along with the petition, *prima facie*, the 2nd respondent is raising construction in the property allotted to his share and, thereby, question of causing inconvenience to the petitioner does not arise. Balance of convenience is totally in favour of the 2nd respondent but not in favour of the petitioner and even not tilting in favour of the petitioner. Thus, the petitioner miserably failed to establish the three pre-requisites for granting temporary injunction under Order 39 Rules 1 and 2 of C.P.C. to restrain the 2nd respondent from altering or changing physical features of the schedule property. On the other hand, the 2nd respondent established that he would be put to serious loss which cannot be compensated by granting pecuniary damages as he already started construction after obtaining necessary permission from the authorities concerned and incurred huge amount for raising construction as on today and, that apart, balance of convenience is also in his favour. The trial Court declined to grant temporary injunction believing allotment of property under memorandum of family arrangement.

21. The main endeavour of Sri V.Venkata Ramana, learned senior counsel, is that memorandum of family arrangement was not brought on record by the respondents though pleaded and mere pleading is insufficient and, that apart, admission made by the 3rd respondent in previous litigation cannot be used against the petitioner in view of Section 21 of the Act of 1872. There is no quarrel about use of an admission against the maker of such admission or representative in interest. Even if Exs.R1, R2 and R4 are ignored, the specific admissions in para No. 2 of the affidavit filed along with the petition and in the plaint by the petitioner established execution of memorandum of family arrangement. Therefore, these admissions would suffice, *prima facie*, to conclude that there was partition of the property on which the 2nd respondent is raising construction allotted to his share. Therefore, non-production of memorandum of family arrangement is not suffice to grant temporary injunction in favour of the petitioner. The trial Court, relying on Exs.R1 and R2, declined temporary injunction. However, when we advert to the pleadings before the trial Court, more particularly the affidavit filed along with the petition in I.A.No. 1 of 2014 and the plaint in O.S.No. 866 of 2014, there are unequivocal judicial admissions

regarding execution of memorandum of family arrangement which is suffice *prima facie* to accept the case of the 2nd respondent. Therefore, the order passed by the trial Court does not suffer from any legal infirmity warranting interference of this Court in the order under challenge.

22. In ***Colgate Palmolive (India) Limited*** (1st *supra*), the Supreme Court laid down certain guidelines where Court can exercise discretion to grant or refuse relief of *interim* injunction. Even if those guidelines are applied to the present facts of the case, the petitioner would not suffer any injury or damage which cannot be compensated by pecuniary damages. Furthermore, the plea of the 2nd respondent is plain and supported by judicial admission of the petitioner and, on the other hand, if no injunction is granted, the interest of the petitioner would not be affected for the reason that the construction is being raised in part of the property. Therefore, in those circumstances, it is difficult to exercise judicial discretion to grant temporary injunction. On overall consideration of entire material available on record, we find no illegality or irregularity in the order passed by the trial Court.

23. Before parting with the judgment, we feel it necessary to express our view about method of marking documents. The trial Court marked documents in P series and R series as per the appendix of evidence but, as per Rule 60 of Civil Rules of Practice, any fact required to be proved upon an interlocutory proceeding shall unless otherwise provided by these, rules, or ordered by the Court, be proved by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment. A bare reading of Rule 60 of Civil Rules of Practice, it is clear that documents shall be marked as exhibits in the same manner as in a suit. Rule 115 of Civil Rules of Practice deals with marking of exhibits which is extracted hereunder for better appreciation:

"(1) Exhibits admitted in evidence shall be marked as follows:

- i. *If filed by the plaintiff of one or several plaintiffs, with the capital letter 'A' followed by a numeral A1, A2, A3 etc.*
- ii. *If filed by the defendant or one of several defendants with the capital letter 'B' followed by a numeral B1, B2, B3 etc.*
- iii. *If Court exhibits, with the capital letter 'C' followed by a numeral C1, C2, C3 etc.,*

iv. *If third party exhibits, with the capital letter 'X' followed by a numeral X1, X2, X3 etc.*

(2) The exhibits filed by the several plaintiffs or defendants shall be marked consecutively.

(3) If in a proceeding subsequent to the trial of a suit or matter, further exhibits are admitted in evidence, they shall be marked in accordance with the above scheme with numbers consecutive to the number on the last Exhibit previously filed.

In view of Rule 115 of Civil Rules of Practice, if the petitioner-plaintiff files documents, they shall be given A series followed by a numeral A1, A2, A3 etc. If the documents are filed by defendant or one of several defendants, they can be given B series followed by a numeral B1, B2, B3 etc. If the documents are exhibited through Court, they shall be given C series followed by a numeral C1, C2, C3 etc. When the documents are exhibited through a third party, they shall be given X series followed by a numeral X1, X2, X3 etc. On co-joint reading of Rules 60 and 115 of Civil Rules of Practice in Andhra Pradesh, the documents in an interlocutory application shall be marked as in a suit with the capital letters A, B, C and X followed by a numeral. However, presiding officers of the Courts, while disposing of interlocutory applications, marking the documents in P series and R series which is contrary to Rules 60 and 115 of Civil Rules of Practice.

24. In view of our foregoing discussion, we find no ground to set aside the order, under challenge, passed in I.A.No. 1 of 2014 in O.S.No. 866 of 2014 dated 07-10-2014 on the file of the Court of XV Additional District Judge's Court, Ranga Reddy District at L.B. Nagar; the appeal is devoid of merits and deserves to be dismissed.

25. In the result, the civil miscellaneous appeal is dismissed. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

Date: 08th April, 2015. **M.SATYANARAYANA MURTHY, J.**

JSK