

THE HON'BLE SRI JUSTICE K.C.BHANU

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CIVIL REVISION PETITION No.3275 OF 2014

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the order and decree, dated 29.04.2014, in Civil Miscellaneous Appeal No.34 of 2011 passed by the XI Additional District and Sessions Judge, Tenali.

2. The petitioners herein, who are the plaintiffs, filed Original Suit No.101 of 2011 before the Senior Civil Judge, Repalle, for declaration and for recovery of possession. They filed Interlocutory Application No.461 of 2011 in the said suit under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 to grant temporary injunction restraining the respondents herein from alienating the suit schedule property and from making any alterations in it during pendency of the suit. The said petition was allowed by the trial Court vide order, dated 30.11.2011. Aggrieved by the said order, the respondents herein filed an appeal before the learned District Judge. The learned District Judge, after considering the material on record, held that since respondent No.1 herein had already sold the property to respondent Nos.2 to 4, there is no *prima facie* case in favour of the petitioners herein and allowed the appeal. Challenging the same, the present revision is filed.

3. Learned counsel for the petitioners herein contended that the respondents herein obtained decree fraudulently; that in the counter-affidavit filed by the respondents in the appeal, it is stated that the petitioners are also having a share in the schedule property in pursuance of the agreement of sale and hence, he prays to direct the respondents not to alienate the property so as to safeguard the rights of the petitioners.

4. On the other hand, learned counsel for the respondents stated that in pursuance of the judgment and decree, dated 09.08.1994, in Original Suit No.67 of 1990 passed by the Principal Senior Civil Judge, Tenali, the defendants therein were directed to execute a regular sale deed in favour of respondent No.1 herein; that as respondent No.1 has got right, title and interest over the property, he sold portion of the property to some of the respondents; that as the petitioners failed to establish *prima facie* title in respect of the property, question of granting injunction or direction not to alienate the schedule property does not arise and therefore, first appellate Court rightly dismissed the petition and that order needs no interference by this Court.

5. There cannot be any dispute that in granting interim order or injunction order or order not to alienate the property, *prima facie*, the plaintiff has to establish that he has got right, title and interest over the property and if that is shown, the Court has to consider whether any balance of convenience is in favour of the plaintiff or not and if injunction is not granted, any irreparable injury would be caused to the plaintiff.

6. *Prima facie*, case has to be established by the petitioners, which is *sine qua non*. The schedule property is said to have been purchased by the petitioners as well as respondent Nos.1 and 2 herein and one Manne Ranga Rao under an agreement of sale, dated 30.01.1986. When the owner of the property failed to execute a regular sale deed in pursuance of an agreement of sale, the petitioners, respondent Nos.1 and 2 herein and another filed Original Suit No.67 of 1990 before Principal Senior Civil Judge, Tenali. After contest, the suit was decreed directing the defendants therein to execute a regular sale deed in favour of respondent No.1 herein in respect of Item No.1 of the plaint schedule property within one month from the date of that judgment after receiving balance sale consideration, failing which

respondent No.1 was given liberty to get regular sale deed through process of Court. As the defendants therein failed to execute a regular sale deed, respondent No.1 obtained sale deed through process of Court. The said judgment and decree in Original Suit No.67 of 1990 has become final as the petitioners, who are parties to the said, suit did not challenge the same. Therefore, *prima facie*, the petitioners have no right, title and interest over the property in question.

7. *Prima facie* case is a *sine qua non* for entertaining an application for grant of interim injunction. If the petitioners failed to establish the *prima facie* case, then question of considering the other two conditions viz., balance of convenience and irreparable injury, may not arise. Therefore, the appellate Court rightly allowed the application filed by the respondents herein and that order needs no interference by this Court.

8. Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is directed to dispose of the Original Suit No.101 of 2011, as early as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C.BHANU

FEBRUARY 20, 2015
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THE HON'BLE SRI JUSTICE K.C.BHANU

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DATE: 20.02.2015

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