

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No.618 of 2015

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JUDGMENT:

This appeal is filed against the order dated 10.07.2015 passed by the VI Additional District Judge, Godavarikhani in IA.No.670/2014 in OS.No.42/2014, wherein the Court below granted temporary injunction in favour of respondents herein/petitioners holding that the respondent No.3/petitioner No.3 is entitled to make construction in the land to an extent of 0.04 guntas within the share of the third petitioner as a person who is having title cannot be prevented from enjoying the land.

2. The appellants herein are the respondents/defendants and the respondents herein are the petitioners/plaintiffs before the Court below.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below.

4. The brief facts of the case are that the respondents herein who are petitioners/plaintiffs before the Court below filed IA.No.670 of 2014 in OS.No.42 of 2014 seeking temporary injunction restraining the respondents from interfering with the possession and enjoyment of the second petitioner over an extent of 0.08½ guntas of land and the third petitioner over an extent of 0.08½ guntas of land in Sy.No.638, situated at Bodagutta Kannala Village of Kamanpur Mandal.

5. The case of the petitioners is that the 2nd and 3rd petitioners are brothers and that the 2nd petitioner is the owner and possessor of land to an extent of 0.08 ½ guntas and the 3rd petitioner is the owner and possessor of land to an extent of 0.08 ½ guntas in Sy.No.638, situated at Bodagutta Kannala Village of Kamanpur Mandal of Karimnagar District. Out of 0.08 ½ guntas the 3rd petitioner is constructing the house in 484.40 Square Yards. Originally, the said

land belongs to 1st petitioner, 1st respondent and one Rajaiah who are own brothers and since the younger brother Rajaiah unmarried, issueless and died intestate, after his death the 1st petitioner and 1st respondent partitioned the land in Sy.No.638, situated at Bodagutta Kannala Village of Kamanpur Mandal of Karimnagar District, equally. As such, the 1st petitioner and 1st respondent got 0.25 ½ guntas of land each. It is stated that at the time of partition land measuring 0.06 guntas found excess due to closure of agricultural well belonging to their family, thus the 1st petitioner and 1st respondent each got 0.25 ½ guntas of land as per revenue records and on the spot they got each 0.28 ½ guntas. It is also stated that at the time of partition some excess land without measuring the land was allotted to the 1st petitioner towards 'Jestapalu' as per custom prevailed; that at the time of partition neighbouring land owners and some of the villagers were also present; that the said land is in possession of the petitioners' family and respondents for a period of more than sixty years and that since from the date of partition the 1st petitioner and 1st respondent were in possession and enjoyment of their respective shares and their names were mutated in revenue records as 'pattedars and possessors to their respective shares. They were also issued pattedar pass books and title deeds. It is stated that the 1st petitioner and 1st respondent constructed cattle sheds side by side long back in the above said land and that the 1st petitioner gifted his house situated at Kannala to his daughter and thereafter shifted his resident to cattle shed and that the Grampanchayat also allotted house number to the cattle shed. The 1st petitioner, out of 0.28 ½ guntas of land fell to his share, sold away 0.06 ½ guntas of land to one M.Pramila and 0.05 guntas of land to Rapelli Arjaiah and the remaining land i.e. 0.17 guntas, partitioned among the 2nd and 3rd petitioners, equally, thus the land admeasuring 0.08 ½ guntas each is in possession of the 2nd and 3rd petitioners. Thereafter the 3rd petitioner applied for permission to construct a house in 484.40 square yards out of 0.08 ½ guntas of land fell to his share and that the Grampanchayat accorded permission to him on 22.07.2014 and the 3rd petitioner invested huge amounts for filling the said land with gravel. It is further stated that the 1st respondent except 0.01 guntas of land wherein cattle shed is situated, sold away 27½ guntas of land to various persons through registered sale deeds. The grievance

of the petitioners is that the respondents after filing caveat petitions came to the suit schedule land and house construction of the 3rd petitioner on 20.10.2014 along with their men and tried to dispossess the petitioners from the suit schedule property and also tried to damage the construction made by the 3rd petitioner in the suit schedule land. Hence the petitioners filed the suit seeking perpetual injunction.

6. The respondents who are the appellants herein filed counter before the Court below admitting that the 1st petitioner is the owner and possessor of land in S.No.638 admeasuring 0.25 ½ guntas, situated at Bodagutta Kannala Village of Kamanpur Mandal of Karimnagar District and that the 1st petitioner, 1st respondent and one Rajaiah are owner brothers; that since the younger brother was unmarried, issueless, after his death the 1st petitioner and 1st respondent partitioned the land in Sy.No.638 equally. It is also admitted that at the time of partition land admeasuring 0.06 guntas found excess due to closure of agricultural well belongs to their family, and that the 1st petitioner and 1st respondent each got 0.25 ½ guntas of land as per Revenue records. But the respondents denied that some excess land was allotted to the 1st petitioner towards 'Jestapalu' as per custom prevailed. He also denied that the land is in possession of the family of the petitioners and respondents for a period of more than 60 years. It is admitted that after partition their names were mutated in the revenue records as Pattedars and possessors to their respective shares i.e. 0.25 ½ guntas and that out of 0.25 ½ guntas fell the share of 1st petitioner, he sold away 0.06 ½ guntas to one M.Prameela and 0.05 guntas to one Rapelli Arjaiah and the remaining land admeasuring 0.14 guntas is in possession of the 1st petitioner but not 0.17 guntas as claimed by them in the petition. The respondents also denied granting of 'Jestapalu' to the 1st petitioner and also denied the other contentions of the petitioners.

7. The trial Court after going through the documents Exs.A1 to A20 marked on behalf of the petitioners, granted injunction in favour of petitioners permitting the 3rd petitioner to make construction in the land to an extent of 0.04 guntas

out of 0.08 ½ guntas which fell to his share in Survey No.638.

8. Aggrieved by the aforesaid order, present CMA is filed wherein both the counsel advanced arguments in the main appeal itself stating that the main appeal can be disposed of. As such, the appeal itself is disposed of at this stage.

9. Learned counsel for the appellants who are the respondents before the Court below submits that though partition took place between the appellants and respondents, the land that fell to the share of appellants and the respondents is only 0.25 ½ guntas, each. Even the revenue records produced by the respondents/plaintiffs goes to show that they are the owners of only 0.25 ½ guntas each in Sy.No.638. He also submitted that when excess land was found and is in joint possession of appellants and respondents, injunction cannot be granted. He also submits that the trial Court recorded the finding that the respondents/petitioners are able to show that they owned 0.28 ½ guntas. But, in fact, no documents are produced to support the same. He also submits that the appellants never admitted that there was partition of 0.06 guntas of excess land between them and respondents.

10. On the other hand learned counsel for the respondents herein/petitioners before the trial Court submits that the 3rd respondent is making construction only in 0.04 guntas of land out of 0.08½ guntas fell to his share. He also submits that the 1st respondent sold out 0.11 ½ guntas of land out of the land of 0.28 ½ guntas which fell to his share and the remaining land of 0.17 guntas was partitioned equally between the 2nd and 3rd respondents and as such 3rd respondent is in possession of 0.08½ guntas.

11. A perusal of copies of Exs.A1 to A14 submitted by the learned counsel for the respondent/plaintiffs goes to show that the respondent/plaintiffs are the owners of land only to an extent of 0.25 ½ guntas. Nowhere, in the documents it is found that they are the owners of land to an extent of 0.28 ½ guntas.

Learned counsel for the respondents also states that the excess land was partitioned in the presence of elders in the village. Even the counter affidavit filed by the appellants/respondents before the Court below does not indicate that the excess land of 0.06 guntas was partitioned. The documents filed by the respondents/petitioners also does not support that the excess land of 0.06 guntas was partitioned. It is also not clear whether the construction made by the 3rd respondent falls within the share allotted to the respondents/petitioners or within the excess land found due to the closure of the 'well'. Though the partition of excess land of 0.06 guntas was not born on record, the trial Court gave an observation that the respondents admitted the partition of 0.06 guntas of land. Further, the trial Court without appreciating the documentary evidence in proper perspective allowed the IA.

12. In view of the above, the CMA is allowed and the order dated 10.07.2015 passed by the VI Additional District Judge, Godavarikhani, is set aside. However, since the aforesaid issues are to be decided in detail only at the time of trial, the trial Court is directed to dispose of the suit itself on merits, within a period of four months from the date of receipt of a copy of this order, without being influenced by any of the observations made herein, since the observations are made for the purpose of disposal of this appeal against interlocutory order. Till then, *Status Quo* obtaining as on today shall be maintained by both the parties. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

14.12.2015

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