

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.1221 and 1233 of 2013

COMMON ORDER :

Heard Sri B. Venkat Rama Rao, counsel for Revision Petitioner in both the Revisions, and Sri B. Vijaysen Reddy for respondent nos.1 and 2 in both the Revisions.

2. The Revision Petitioner in both the Revisions is the plaintiff in the suit. The 1st respondent/1st defendant is his mother and 2nd respondent/2nd defendant is his brother.
3. The plaint 'A' suit schedule property is a house of plot No.7 bearing Municipal No.1-8-21 admeasuring 217 Sq.yds. at Chikkadpally, Hyderabad; and plaint 'B' schedule property is part of 'A' schedule property consisting of half undivided share in the ground, first and second floors in the said property.
4. The plaintiff's case is that plaint 'A' schedule property was purchased on 17.05.2004 in the joint names of plaintiff and 1st defendant; that the 1st defendant was holding the property in fiduciary capacity (which is disputed by 1st defendant); that he is the absolute owner and possessor of plaint 'B' schedule property and the other 50% in the plaint 'B' schedule property also belongs to him. He therefore, sought a declaration to that effect apart from another declaration that a gift deed dt.28.05.2009 executed by 1st defendant in favour of 2nd defendant is void, inoperative and not binding on him, and also a perpetual injunction.

5. It is not disputed that respondent nos.3 to 13 herein, who are defendant nos.3 to 13 in the suit, are tenants residing in portions of plaint 'A' schedule property.
6. The plaintiff filed I.A.No.1917 of 2009 under Section 151 CPC seeking a direction to tenants to pay monthly rents in respect of 'A' schedule property to him till disposal of the case. As a counter-blast to the said I.A., respondent nos.1 and 2/defendant nos.1 and 2 filed I.A.No.1357 of 2011 under Section 151 CPC to direct tenants to deposit the rents into the Court, pending decision in the suit.
7. By a common order dt.12.10.2012, the Court below directed tenants to pay 50% of rents to petitioner/plaintiff and deposit the other 50% into Court to the credit of suit. It held that the right and title of plaintiff to receive 50% of amount deposited into the court will be subject matter for adjudication in the suit; and that pending disposal of suit, the amount of rents so deposited would be invested in Fixed Deposits.
8. Challenging the same, these Revisions have been filed.
9. It is the contention of petitioner/plaintiff in both these Revisions that plaint 'A' schedule property was purchased by his money alone; he availed loans from Life Insurance Corporation and created an equitable mortgage; that 1st respondent/1st defendant is only a name lender to sale transaction for purchase of plaint 'A' schedule property and she is a *benamidar* without any title; 1st respondent had no financial capacity to purchase plaint 'A' schedule property although she is mentioned as a vendee in the sale deed only for the limited purpose of availing

loan from LIC Housing Finance Ltd.; he has to pay monthly rent installments of Rs.28,304/-, apart from property tax of Rs.2,840/- per month and also certain maintenance charges; the total rents receivable from tenants is only Rs.68,000/-; and since he is incurring this expenditure, he would not have anything in his hand if the order passed by the trial court is maintained. He prays for setting aside of the said order or its modification so that his expenses mentioned above are met. Sri B. Vankata Rama Rao, counsel for petitioner, reiterated their submissions.

10. Sri B. Vijaysen Reddy, counsel for respondent nos.1 and 2, on the other hand, refuted the said contentions. He pointed out that the pleadings and contentions of petitioner are not correct and that 1st respondent, out of her savings from her earnings and by taking some hand-loans purchased plaint 'A' schedule property; from 2004 till July, 2009, the loan installments to LIC Housing Finance Ltd. were being paid by her or her husband; and the remaining amount was used for maintenance of building and repaying of loan amount obtained for purchase of plaint schedule property. He contended that plaintiff was joined as a co-purchaser only because the LIC Housing Finance Ltd., which granted loan, requested that he be added as a co-purchaser; and the plaintiff had not invested any amount for purchase of property. He contended that the court below had passed an equitable order, and there is no necessity to modify the same or to set it aside.

11. I have noted the submissions of both sides.

12. As stated above, it is an admitted fact that both petitioner as well

as 1st respondent is shown in the registered sale deed dt.17.05.2004 as co-purchasers of plaint 'A' schedule property. Therefore, *prima facie*, each would have a 50% undivided share therein. The question whether plaintiff exclusively contributed sale consideration and 1st defendant was only a *benamidar* for him or not is an issue to be gone into the suit. It may be that certain amount is to be paid to LIC Housing Finance Ltd. in discharge of loan taken by the parties. Again it is a question of fact as to who has been paying the loan installments - whether it was 1st defendant who paid it from 2004 till July 2009 or not.

13. Therefore, I am of the view that the Court below had balanced interests of both parties by directing respondent nos.3 to 13 herein to pay 50% of the rents to petitioner and to deposit the other 50% of rents into Court observing that right and entitlement of petitioner to receive the 50% deposited amount into the Court would be subject matter of the suit.
14. Therefore, I do not find any error or jurisdiction in both the Revisions. They are accordingly dismissed. No order as to costs.
15. Since the suit is of the year 2009, the Court below is directed to expeditiously decide the suit.
16. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2015

Ndr/*