

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Miscellaneous Appeal No.601 of 2015

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JUDGMENT:

This appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('the Code' for short) by the unsuccessful petitioner/plaintiff is directed against the orders dated 22.07.2014 of the learned Additional District Judge, Ranga Reddy District at L.B. Nagar passed in IA.No.2303 of 2013 in OS.No.1338 of 2013 filed by the sole plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code requesting to restrain the respondents/defendants, their men, agents and any person/s claiming through them from interfering with the plaintiff's peaceful possession over Ac.5.00 guntas of land out of Ac.11.13 ½ guntas in survey no.222 situate at Gajularamaram Village, Qutubullapur Mandal of Ranga Reddy District surrounded by compound wall and more fully described in the schedule annexed to the plaint and petition.

2. I have heard the submissions of the learned counsel for the parties. I have perused the material record. The parties shall hereinafter be referred to as the plaintiff and the defendants for convenience and clarity.

3. At the outset, it is necessary to refer to the pleadings of the parties and the facts that lead to the filing of this appeal by the unsuccessful plaintiff.

3.1 The case of the plaintiff, in brief, is this:

The plaintiff is the absolute owner and possessor of the plaint schedule land. He had constructed a compound wall around the area of Ac.5.00 guntas which is the plaint schedule property. The plaintiff had purchased Ac.11.13 ½ guntas in survey no.222 from Fatima begum, who is the daughter of the original pattadar and possessor by name Jahangir Begum. The said Fatima Begum had filed OS.201 of 1986 on the file of the Court of the Additional Subordinate Judge, Ranga Reddy

District against Jahangir Begum and Afzal Ali for declaration of ownership in respect of the property and for correction of revenue records and for perpetual injunction. The plaintiff got himself impleaded in the said suit as plaintiff no.2. The said suit was decreed on 29.04.1987 in favour of the plaintiff herein as prayed for. The said Fatima Begum had filed OS.555 of 1990 on the file of the Court of the I Additional Subordinate Judge, Ranga Reddy District for declaration that the decree and judgment dated 29.04.1987 in OS.No.201 of 1986 in favour of the plaintiff herein are null and void. The said suit was decreed by decree and judgment dated 29.09.1997. The plaintiff herein had filed a first appeal in AS.No.1 of 1998 on the file of the Court of the IV Additional District Judge (Judge, Fast Track Court), Ranga Reddy District. The said appeal was allowed by a decree and judgment dated 21.03.2003. Thus the decree and judgment in OS.No.201 of 1986 have become final whereunder the plaintiff is declared as the absolute owner of Ac.11.13 ½ guntas in survey no.222 which includes the plaint schedule property. After obtaining the report dated 28.01.2011 from the Deputy Collector and Tahasildar, Quthbullapur, the Collector, Ranga Reddy District by proceedings in letter no.D5/6837/2010 dated 17.03.2011 directed the Deputy Collector and Tahasildar, Quthbullapur Mandal, Ranga Reddy District to take necessary action as per the judgment and decree in OS.No.201 of 1986 after duly following the Rules. The said Tahsildar *vide* memo dated 18.04.2011 had corrected the entries in the pahanies in respect of the said extent of Ac.11.13 ½ guntas in survey no.222 including the plaint schedule property in favour of the plaintiff from the year 1993-94 onwards as per the decree in the said suit and as directed by the District Collector. While so, the defendants are claiming the property from Gottimukkala Suryanarayana Raju and others who had obtained the Occupancy Right Certificate (ORC) granted by the Revenue Divisional Officer, Ranga Reddy East Division in proceedings No.J/718/1994 dated 21.09.1994 in respect of Ac.73.22 guntas out of Ac.84.14 guntas in survey no.222 of Gajularamaram village including the present schedule property. The land in survey no.222 is not an Inam land but, only a patta land. Therefore, no ORC could have been granted and the ORC that was granted is one granted without jurisdiction. Therefore, the plaintiff had filed an appeal no.F1/2327/1999 before the Joint collector. The said appeal was allowed and the order of the RDO dated 16.09.1994 granting the ORC to the said G.Suryanarayana Raju and others was set aside. The defendants and others filed CRP.6656 of 2004 and batch of cases before this Court and the said cases were allowed by an order dated 11.06.2007 and the matter was

remitted to the Joint Collector, Ranga Reddy for fresh disposal. The said appeals are pending before the Joint Collector. While so, the defendants had started interfering with the possession of the plaintiff with the support of local politicians and goondas. On 27.10.2013, some persons representing the defendants have come to the schedule property and threatened with dire consequences the nephew of the plaintiff who was supervising the plaintiff's schedule property on behalf of the plaintiff as his general power of attorney holder. He was threatened that they would face dire consequences, if the plaintiff does not vacate the property. The proceedings of the RDO, Ranga Reddy dated 21.09.1994 clearly excluded the plaintiff's schedule property on the ground civil suits are pending. The said suits ended in favour of the plaintiff and the decision in the suits has become final. The vendors of the defendants i.e., G. Suryanarayana Raju and others claimed only Ac.73.22 guntas in survey no.222 before the RDO and got the ORC only for the said extent and the same is under appeal before the Joint Collector. At any rate the plaintiff's schedule property is excluded from that property and the defendants cannot have any claim whatsoever in respect of the plaintiff's schedule property. Therefore, the defendants' interference with the plaintiff's peaceful possession and enjoyment of the plaintiff's schedule property is illegal. The police had refused to either receive the complaint or interfere in the matter as the matter is a civil dispute. They did so only on account of the influence of the defendants who are very rich and locally powerful. The plaintiff has got *prima facie* case and the balance of convenience is in his favour and hence, it is just and fair to restrain the defendants and their men from interfering with the peaceful possession over the plaintiff's schedule property otherwise the plaintiff suffers serious and irreparable loss and hardship.

3.2 The Managing Trustee of the first defendant hospital had filed a detailed counter affidavit on behalf of the defendants 1 and 2 denying the material allegations in the affidavit of the plaintiff filed in support of the petition. The crux of the defence of the defendants, in brief, is this:

The plaintiff has no right, title and interest over the plaintiff's schedule property. But he had filed this suit mischievously identifying the property owned and possessed by the defendants to the extent of land admeasuring Ac.4.00 guntas in survey no.222 of Gajularamaram village as the plaintiff's schedule property, which is leased out by the defendants 2 to 4 to the 1st defendant hospital. The land in survey no.222 admeasures Ac.84.14 guntas. It is an Inam land and not a patta land. Out of the said

extent, an extent of Ac.73.22 guntas is the subject matter of ORC proceedings. Admittedly, the plaintiff has no claim over the said extent of land. The plaintiff's claim as the owner and possessor is confined to the remaining Ac.11.13 ½ guntas out of the total extent which are in fact the holdings of T.Laxmi Eswaramma and Sitha Mahalakshmi (who were not conferred with the ORC). The present suit is filed mischievously claiming Ac.5.00 guntas which actually forms part of Ac.73.22 guntas of Inam land for which ORC was granted and the plaint schedule land is particularly the holding of the K.S.N Raju, the vendor of the defendants. The plaintiff wrongly claims that the plaint schedule Ac.5.00 guntas forms part of Ac.11.13 ½ guntas in survey no.222 by giving wrong description of the boundaries. In reality, according to the plaintiff, he is concerned with Ac.11.13 ½ guntas in suit survey no.222. The plaintiff cannot claim the plaint schedule property which includes Ac.4.00 guntas belonging to the defendants 2 to 4 by mis-describing the property. The plaintiff cannot make a claim for Ac.5.00 guntas, which allegedly forms part of Ac.11.13 ½ guntas, even without proper identification of the said extent of land in survey no.222. Therefore, the relief cannot be granted to the plaintiff. The plaintiff is the absolute owner of Ac.11.13 ½ guntas in survey no.222 and that he had constructed a compound wall around the area of Ac.5.00 guntas, which is the plaint schedule property and that he is in peaceful possession and enjoyment of the same and that there was interference with his possession as alleged are all emphatically denied. The plaintiff did not disclose his source of title much less the flow of title from the alleged vendor-Fatima Begum except relying upon a consent decree in OS.No.201 of 1986. No documentary evidence/authenticated plan was filed to show that the plaintiff is in possession under a valid document. The vendor of the plaintiff never owned and possessed the plaint schedule property at any point of time and the property as stated by the defendants 2 to 4 is in possession of the defendants and prior to the defendants the possession of the property was with the predecessors in title of the defendants as absolute owners. The decrees and judgments stated in the pleadings of the plaintiff are collusive decrees and judgments and they were obtained by playing fraud on the Courts and they are not decrees and judgments granted on merits. In the decree granted by the civil Court for declaration of title in respect of Inam land in the absence of ORC is a nullity and *non est* in the eye of law as the civil Court lacks jurisdiction to grant such a declaratory decree. The defendants and their predecessors in interest are not parties to the said suits and the decrees and judgments in the said suits are not binding on the defendants. On

acquiring Ac.4.00 guntas of land in survey no.222 adjoining the Ac.09.00 guntas of hospital site, the defendants 2 to 4 have jointly leased out the said Ac.4.00 guntas of land to the 1st defendant hospital under a lease agreement dated 04.01.1999 and that on obtaining the said Ac.4.00 guntas of property on lease the 1st defendant hospital had constructed a compound wall (with granite up to 2' above the ground + a cement brick wall of the height of 4 – 5 feet) with a total height of 6 to 7 feet. The said hospital had further constructed two rooms in the said property. One of the said rooms is being used by the security guards for watch and ward and also as an office for all the security personnel working for the 1st respondent hospital and the said room was assessed to municipal property tax and was assigned house no.2-145/1. Another room is being used as electrical panel and meter room by the 1st defendant hospital for the service connection obtained in the name of the 2nd defendant. A bore well was dug up in the said land and it is being operated with a submersible motor and water was being drawn for the use of the hospital from the said bore-well. The 1st defendant hospital is paying property tax and electricity bills to the concerned departments and when there was a demand for payment of vacant land tax by the authorities, the same was also paid by the 1st defendant hospital. The 1st defendant hospital is also putting to use the said extent of Ac.4.00 guntas also for parking its vehicles such as Ambulances, mini travel bus for staff and other staff vehicles etcetera and the said extent of land is located in front of the main hospital building and there is also a name board of the hospital placed in the said premises. The accretions to the said property were made from time to time depending upon the needs and requirements of the 1st defendant hospital and the said acts of possession show that the defendants are in possession and enjoyment as absolute owners to the knowledge of one and all and particularly, the plaintiff. The said premises of Ac.4.00 guntas in survey no.222 owned and possessed by the 1st defendant hospital as a lessee is within the following boundaries: 'North: 60' road leading to Gajularamaram from Narsapur; SOUTH: Land in Sy.No.222; East: Land in Sy.No.222; West: 40' wide road'. The plaintiff is mischievously stating that the existing compound wall is constructed by him and identifying the defendants' property as the property forming part of Ac.11.13 ½ guntas purchased by him from the original inamdar. The title and possession of the property viz., Ac.4.00 guntas in survey no.222 was confirmed by a decree and judgment dated 23.10.2006 passed by the learned I Additional Senior Civil Judge, Ranga Reddy District on merits in

OS.No.612 of 1999 filed by the defendants against third parties for a perpetual injunction. Further, the title and possession over the said property was also confirmed by a decree and judgment dated 15.11.2006 passed by the learned Junior Civil Judge, Medhcal on merits in OS.No.242 of 2001 filed by the defendants for perpetual injunction against third parties; and also by a decree and judgment dated 23.04.2008 in OS.No.590 of 2002 and a decree and judgment dated 20.01.2012 in OS.No.247 of 2002 passed by the VI Additional Senior Civil Judge, Medchal. The possession and enjoyment of the defendants over the suit property is also evident from the Commissioner's report which forms part of the record in OS.No.247 of 2002 stated above. Hence, the present suit as well as the interlocutory application for injunction is a chance litigation to come into possession of the property of the defendants by obtaining orders from the court (trial Court) and thereby extract money from the defendants under the threat of litigation. From 1998 onwards the defendants have been in continuous possession and enjoyment over the said land as absolute owners to the knowledge of one and all and particularly the plaintiff and the plaintiff has no manner of right, title and interest and possession over the plaint schedule property. The plaintiff is not entitled to seek any relief against the defendants who are owners and in lawful possession of the property. The plaintiff has no *prima facie* case. The balance of convenience is in favour of the defendants. The petition may be dismissed.

3.3 At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. The trial Court had dismissed the petition of the plaintiff. Therefore, the aggrieved plaintiff is before this Court.

4. At the time of hearing, the learned counsel for both the sides had reiterated the respective contentions of the parties stated in the respective pleadings.

5. The learned counsel for the plaintiff/appellant had assailed the order and decretal order of the Court below contending as follows:

The order impugned is erroneous and is unsustainable. The plaintiff had filed number of documents but, the court below did not advert to the said documents. No opportunity was given to exhibit the same. Had the trial Court looked into the documents of the plaintiff, the trial Court would not to have reached the same

conclusion which was expressed in the impugned order and might not to have dismissed the application for temporary injunction filed by the plaintiff. The Court below ought to have seen that admittedly the plaintiff is not claiming Ac.73.22 guntas in survey no.222 and that the remaining Ac.11.13 ½ guntas out of Ac.84.00 guntas is excluded and not included in the said extent of Ac.73.22 guntas in the same survey number and that the plaintiff is claiming only Ac.5.00 guntas out of the excluded Ac.11.13 ½ guntas in survey no.222. Admittedly, the defendants have no claim in respect of Ac.11.13 ½ guntas and the plaintiff has no claim in respect of Ac.73.22 guntas in this present *lis*. The defendants, for the sake of opposing the case of the plaintiff, had raised a false contest that the plaintiff is claiming their property of Ac.4.00 guntas though the plaintiff is claiming Ac.5.00 guntas within the specific boundaries mentioned in the plaint schedule which is totally different from the property that is being claimed by the defendants 2 to 4 as owners and possessors and the 1st defendant as lessee. The defendants have no manner of right, title and interest and possession in respect of the plaint schedule Ac.5.00 guntas of land.

6. On the other hand, the learned counsel for the defendants while supporting the order and decretal order of the trial Court had contended that the Court below had rightly dismissed the temporary injunction application filed by the plaintiff by properly considering the facts and the contentions of the parties.

7. Before proceeding further, it is to be noted that though the learned counsel for both the sides had advanced arguments on merits of the matter by placing reliance on several documents and precedents, no petitions are filed before this Court to receive the documents as additional evidence except CMAMP.No.1461 of 2015, which was filed to permit the plaintiff to file the certified copy of the sketch annexed to the decree in OS.No.201 of 1986 as additional evidence.

8 .No documents were exhibited on either side at the time of hearing of the interlocutory application before the trial Court. Therefore, the contents of the documents of the parties are not adverted to and not considered by the Court below. However, in the orders of the court below, a passing reference was made to the contents of some documents, which are not exhibited. Nevertheless, no reference was made to all the documents, which were filed before it though not marked. Both sides filed with their material papers not only the copies of some of the documents that were filed before the trial court but also some more documents for the first time

before this court. When an Interlocutory Application is filed for a temporary injunction in regard to immovable property, the Court has to necessarily look into the documents of both the parties and examine the contents thereof to find out as to whether the respective cases pleaded find support from the recitals in the respective documents. Reference to documents is also necessary to find out whether a *prima facie* case is made out or not. No just decision as regards a *prima facie* case in regard to the property in dispute can be made without looking into the documentary evidence that was relied upon and now being sought to be relied upon by both the parties. In the light of the rival contentions involving complexity, it is necessary to refer to and carefully examine the recitals of all the documents before coming to a just decision in the matter. Unless the documents filed by both the parties filed before the trial court are exhibited, the same will not be sent to this Court along with the lower Court records. Unless the documents are before this Court and are duly exhibited, it is neither possible nor is just and proper to appreciate the rival contentions. The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the petition for temporary injunction on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. It is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. Rule 60 of the Civil Rules of Practice says that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits. This Court in a decision in **A.P. Minerals Development Corporation Limited Hyderabad v. M/s.Trimex Minerals Pvt.Ltd.,** and another decision in **Bhoopal Reddy and another v. K.Lakshmi Bhai and another** held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own. In these circumstances, it is just and proper to allow the appeal and remand the matter to the trial Court for fresh disposal of the IA on merits, after following the procedure established by law which was adverted to *supra*.

9. In view of the observations in this order, the plaintiff and the defendants are permitted to take return of their respective documents which are filed before this

court along with CMAMP.1461 of 2015 and as additional material papers and file the same before the trial Court, if they so desire, for appropriate consideration in the above said interlocutory application. It is made clear that this Court did not advert to the merits of the matter as this Court was of the view that the interlocutory application has to be decided afresh on merits by the court below after taking into consideration the relevant and admissible documents that may be filed and exhibited at the time of hearing of the said application afresh by the court below.

10. For the reasons assigned, the Civil Miscellaneous Appeal is allowed and the order and the decretal order of the trial Court in I.A.No.2303 of 2013 are set aside and the said IA is remitted to the trial Court with a direction to give an opportunity to both the parties to exhibit their respective documents and then dispose of the said application afresh, on merits and in accordance with the procedure established by law and as expeditiously as possible and preferably within one month from the date of receipt of a copy of this judgment.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

9th November, 2015

Vjl