

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
CIVIL MISCELLANEOUS APPEAL Nos.867 AND 868 OF 2014

COMMON JUDGMENT: (Per Hon'ble Sri Justice M. Satyanarayana Murthy)

These two Appeals are preferred by the unsuccessful petitioner in I.A. Nos.2338 and 2339 of 2013 in O.S. No.906 of 2013, whereunder I.A. Nos.2338 and 2339 of 2013, filed under Order XXXIX Rules 1 and 2 of C.P.C. were dismissed by the II Additional District Judge, Ranga Reddy District at L.B. Nagar (for short, 'the trial Court'), *vide* common order dated 28.07.2014.

2. For convenience of reference, the ranks given to the parties in I.A. Nos.2338 and 2339 of 2013, before the trial Court, will be adopted throughout this common judgment.

3. The petitioner in both these petitions filed 2 separate petitions under Order XXXIX Rules 1 and 2 of C.P.C. with common allegations; however, the reliefs in both the petitions are with little variation. I.A. No.2338 of 2013 is filed for temporary injunction restraining the respondents and their men from alienating or otherwise transferring the petition schedule property to third parties; whereas I.A. No.2339 of 2013 is filed for temporary injunction restraining the 14th respondent from interfering with the peaceful joint possession and enjoyment of the petition schedule property, both during pendency of the suit, respectively.

4. The petitioner herein filed the suit in O.S. No.906 of 2013 for partition alleging that the respondents 1 to 5, late Konda Ramachandra Reddy and respondents 10 to 13 are brothers/sisters and sons/daughters of late Konda Laxma Reddy and Laxmamma. Konda Laxmamma died subsequent to death of Konda Laxma Reddy and

Laxma Reddy died intestate on 28.05.1980 leaving behind the petitioner, respondents 1 to 5, late Konda Ramachandra Reddy and respondents 10 to 13 as his legal heirs to succeed his estate. Konda Ramachandra Reddy, who is another brother of petitioner, respondents 1 to 5 and 10 to 13, also died intestate on 22.08.2009 leaving behind his 2nd wife and children as his legal heirs to succeed the estate; 6th respondent is 2nd wife, respondents 7 and 8 are children born through 1st wife and 9th respondent is 2nd wife's daughter. 1st wife of late Ramachandra Reddy died in the year 1980. 14th respondent is stranger to the family of petitioner and respondents 1 to 13 but purchased land in Survey No.82 under registered sale deed and had no right to interfere with the peaceful possession and enjoyment of the property since the petitioner and other respondents are in joint actual possession of the property.

5. It is further contended that the petitioner and respondents 1 to 13 are in joint possession of the land admeasuring Ac.10.31 guntas in Survey No.81 and Ac.20.20 guntas in Survey No.82 of Balapur village, Saroornagar mandal and Ranga Reddy district being legal heirs of late Laxma Reddy, father of the petitioner and late Laxma Reddy inherited the property being the coparcener from his father by way of compromise decree in a partition suit in O.S. No.470 of 1978, dated 14.12.1978 along with other property and since the date of death of Laxma Reddy, the petitioner and respondents 1 to 13 are enjoying the schedule property with joint rights.

6. The petitioner demanded respondents 1 to 13 to co-operate for partition of the schedule property, after death of Laxma Reddy, and to allot 1/11th share to him but his legitimate demand was not complied with. It is contended that the 14th respondent tried to get part of the schedule property claiming himself as General Power of Attorney holder of 4th respondent. On an enquiry, the petitioner came to know

that respondents 2 to 4 in collusion with each other created a sham and bogus partition deed and got it registered in Sub-Registrar's Office of Shameerpet, Ranga Reddy district *vide* document bearing No.1853 of 2013 dated 18.06.2013 with a *mala fide* intention and to defeat the claim of the petitioner. On further verification, it came to the notice of the petitioner that 4th respondent executed a document in favour of 14th respondent on the strength of the partition deed styling it as an Agreement of Sale-cum-General Power of Attorney with delivery of possession *vide* document No.2077/13, dated 03.07.2013. Moreover, the 14th respondent was never in possession and enjoyment of any part of the property though the document is a possessory Agreement of Sale-cum-General Power of Attorney. Thus, the sham and nominal documents created by respondents 1 to 13 in favour of 14th respondent are not binding on the petitioner. Finally, it is contended that, in case, the respondents are allowed to alienate any part of the property executing deed of conveyance in favour of 14th respondent or third parties, it will cause hardship and loss to the petitioner besides affecting his right and interest in the schedule property. Unless temporary injunction is granted in favour of the petitioner, it is difficult for him to protect his interest in the property, hence, claimed temporary injunction restraining the respondents 1 to 14 from alienating the schedule property during pendency of the suit.

7. In I.A. No. 2399 of 2013, the petitioner while reiterating the facts, contended that when the 14th respondent tried to interfere with his joint possession and enjoyment of the schedule property on 16.07.2013, his high-handed acts were resisted by the petitioner with the help of his neighbours and well-wishers but the 14th respondent threatened the petitioner that he would take forcible possession and with dire consequences. If interim injunction is not granted restraining the 14th respondent, his agents and representatives from interfering with his

peaceful possession and enjoyment of the property, the petitioner will sustain irreparable loss which cannot be compensated by granting pecuniary damages. Hence, the petitioner claimed temporary injunction restraining the 14th respondent and his men from interfering with the joint possession of schedule property, in any manner whatsoever, during pendency of the suit.

8. 1st respondent filed separate counter and the respondents 2 to 4 filed joint counter wherein they denied material allegations while admitting the relationship between the petitioner and respondents 1 to 13 and succeeding property by late Laxma Reddy, under compromise decree in O.S. No.470 of 1978 on the file of IV Additional Judge, City Civil Court, Hyderabad. They further admitted that private land in Survey Nos.81 and 82 of Balapur village, a total extent of Ac.31.11 guntas, along with other land referred in B schedule of the decree in O.S. No.470 of 1978 on the file of IV Additional Judge, City Civil Court, Hyderabad was allotted to the share of Laxma Reddy and during his life time, Laxma Reddy was in exclusive enjoyment of the property till his death in the year 1980 and after his demise respondents 2 to 4 were in peaceful possession and enjoyment of the property as per family arrangement which was reduced into writing and in the said family arrangement the petitioner, respondents 1, 5 and husband of 6th respondent relinquished their share over the suit schedule property in favour of respondents 2 to 4. The family arrangement dated 07.08.1982 is within the knowledge of the daughters of Laxma Reddy, respondents 10 to 13 and in view of the family arrangement, respondents 2 to 5 and husband of 6th respondent were accommodated and delivered other land which was held by Laxma Reddy and, to harass the respondents 2 to 4, the present suit is filed on flimsy grounds.

The petitioner suppressed the family arrangement that took

place about three decades back thereby question of continuing in joint possession of the schedule property by the petitioner and respondents 1 to 13 does not arise; even otherwise, respondents 2 to 4 perfected their title by adverse possession over the schedule property; consequently, the petitioner is not entitled to claim 1/11th share in the schedule property. The schedule property is a dry land and hillock situated in the outskirts of Balapur village, moreover the fertile land in Balapur village was allotted to petitioner, respondents 1 to 5 and husband of 6th respondent which is situated in the heart of Balapur village and they sold the property to third parties and became financially strong and when the respondents 2 to 4 intend to dispose the schedule property, filed the present suit with false allegations and the names of respondents 2 to 4 were mutated in revenue records after family arrangement and they are exclusive owners of schedule property having exclusive right and that the action of respondents 2 to 4 *i.e.*, execution of Agreement of Sale-cum-General Power of Attorney cannot be questioned by the petitioner and that the petitioner and other respondents have no manner of right in the schedule property and prayed to dismiss the petitions.

9. 5th respondent filed counter sailing with the petitioner, almost reproducing the averments made in the affidavit filed along with the petition. Therefore, we need not repeat the specific contentions of 5th respondent. Similarly, respondents 6, 8 and 9 filed counter-affidavits supporting the petitioner in all respects virtually reporting no objection for grant of temporary injunction in favour of the petitioner.

10. 7th respondent filed her counter denying material averments of the affidavit filed along with the petition contending that her grandfather late Laxma Reddy was the owner of the plaint schedule property and the same was given to respondents 2 to 4 who are her paternal uncles and a written note was executed by her father late K.

Ramachandra Reddy and the petitioner, respondents 1 and 5 had no right or interest in the schedule property in view of the family arrangement thereby the petitioner is not entitled to claim temporary injunction during pendency of the suit and prayed to dismiss the petitions.

11. On behalf of respondents 10 to 13, 13th respondent filed counter supporting the respondents 2 to 4 while contending that the petitioner was never in physical possession and enjoyment of the schedule property, after relinquishing his right in the schedule property in favour of respondents 2 to 4 by family arrangement dated 07.08.1982 and that the schedule property is in exclusive possession and enjoyment of respondents 2 to 4 and supported the respondents 2 to 4 in all respects.

12. 14th respondent filed counter denying material allegations made in the affidavit annexed to the petition while contending that the suit is not maintainable as the petitioner was never in physical possession of the schedule property and thereby question of claiming temporary injunction either to restrain the respondents and their men from alienating the property or to restrain the 14th respondent from interfering with the peaceful possession and enjoyment of the property does not arise. It is further contended that originally father of the petitioner, respondents 1 to 5 and husband of 6th respondent by name Konda Ramachandra Reddy were allotted their respective share of land in the compromise decree in O.S. No.470 of 1978 on the file of IV Additional Judge, City Civil Court, Hyderabad dated 14.12.1978 and after compromise decree Laxma Reddy got the schedule property along with others towards his share and enjoyed the same during his life time; after his death, the petitioner, respondents 1, 5 and husband of 6th respondent relinquished their right in the schedule property in favour of respondents 2 to 4 undertaking not to claim any share in the

schedule property and other property but suppressing the said fact, the present suit and petitions are filed, therefore, the claim of the petitioner is against the family arrangement dated 07.08.1982. The petitioner, defendants 1, 5 to 13 were never in possession and enjoyment of the property after execution of family arrangement deed dated 07.08.1982 thereby the petitioner is not entitled to claim temporary injunction during pendency of the suit. This respondent asserted that he is in exclusive possession and enjoyment of the property, in view of registered General Power of Attorney-cum-Agreement of Sale dated 06.06.2013, and thereby the petitioner is not entitled to claim any right in the property and prayed to dismiss the petitions.

13. During course of enquiry, no oral evidence was adduced on either side but marked Exs.A-1 to A-14 on behalf of the petitioner and Exs.B-1 to B-29 on behalf of the respondents.

14. Upon hearing argument of both the counsel, the trial Court dismissed both the applications declining to grant temporary injunction, during pendency of the suit, assigning its own reasons.

15. Aggrieved by the common order and decretal orders passed in I.A. Nos.2338 and 2339 of 2013, dated 28.07.2014, the unsuccessful petitioner therein filed these Appeals raising similar grounds. The specific contention of the petitioner is that un-registered alleged family arrangement dated 11.08.1978 is inadmissible in evidence for want of registration and proper stamp but the trial Court placed much reliance on it; that apart, placing reliance on the document dated 07.08.1982 which requires compulsory registration is an error committed by the trial Court.

It is further contended that the revenue records stood in the name of father of the petitioner Laxma Reddy and if the documents dated 11.08.1978 and 07.08.1982 were pressed into service, their

names would have been mutated in the revenue records for the schedule property but this was not appreciated by the trial Court in proper perspective.

The trial Court also failed to consider the contention of the 1st respondent about sale of lands to 3rd parties in Survey Nos.144, 145 and the lands in Survey Nos.170, 173 and 176 were in possession of protected tenants, who obtained 38-E certificate; if the said extent is excluded, the land available for partition is only the suit schedule property in Survey Nos.81 and 82 but the trial Court erroneously concluded that the suit for partial partition is not maintainable, finally, it is contended that the trial Court failed to consider the right and interest of the petitioner and other legal heirs of Laxma Reddy and committed an error in dismissing the petitions and prayed to allow the Appeals setting-aside the common order and decrees passed by the trial Court in I.A. Nos.2338 and 2339 of 2013 in O.S. No.906 of 2013.

16. During course of hearing, the petitioner-appellant filed C.M.A. M.P. No.1389 of 2014 in C.M.A. No.867 of 2014 and C.M.A. M.P. (SR) No.29989 of 2014 under Order XLI Rule 27 of C.P.C. to receive the documents set out in the list as additional evidence and a separate common order is passed therein.

17. Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

1) Whether the petitioner is entitled to claim a temporary injunction during pendency of the suit, restraining the respondents from alienating the property in any manner?

2) Whether the petitioner is entitled to claim an order of temporary injunction restraining the 14th respondent from interfering with joint possession

and enjoyment of the property?

18. **POINT No.1:** According to the petitioner, the petitioner himself is in joint possession and enjoyment of the property along with other *coparceners*, however, the *coparceners* denied joint possession and enjoyment while contending that the schedule property was allotted to respondents 1 and 2 in the partition in view of the family arrangement entered into by the coparceners; thereby, the petitioner is out of possession and not entitled to claim any possession, *prima-facie*, however the trial Court concluded that there are many properties allotted to the share of father of the petitioner, late K. Ramachandra Reddy, respondents 1 to 5 and 10 to 13, other *coparceners* but the entire extent shown in the schedule allotted to the father of the petitioner was not the schedule property and no partition is claimed but simply claimed a share in schedule property which is an extent of Ac.31.11 guntas but whereas Ac.60.36 guntas of land was allotted to the father of the petitioner, as per their admission, therefore, the suit is only for partial partition and not maintainable, *prima-facie*, on this ground also, the trial Court declined to grant temporary injunction during pendency of the suit. When we adverted to the pleadings in plaint, the total extent of land allotted to father of the petitioner is Ac.60.36 guntas of land in different survey numbers of Ranga Reddy District; whereas, the suit schedule is only an extent of Ac.31.11 guntas as per the plaint. There is no whisper about the other property but strangely, during hearing, it is contended by learned counsel for the petitioner-appellant that the other property, allotted to the share of the petitioner's father late Laxma Reddy, was disposed of on different dates but this fact was not substantiated by any evidence on record, therefore, in the absence of other property allotted to the share of late Laxma Reddy, the suit is only for partial partition and not maintainable, *prima-facie*, in view of the principles laid down by the Apex Court in ***Kenchegowda (Since deceased) by legal representatives Vs.***

Siddegowda alias Motegowda^[1] and judgment of this Court in ***N. Jangi Reddy and others Vs. Yellaram Narsimha Reddy and others***^[2].

19. When the petitioner approached the Court for grant of a discretionary relief under Order XXXIX Rules 1 and 2 of C.P.C., it is for him to prove that he is entitled to claim a share in the property *prima-facie* so as to enable the Court to exercise discretion to grant temporary injunction. The basis for claim of the petitioner is only the pahanies marked as Exs.A-1 to A-8, encumbrance certificates marked as Exs.A-12 and A-13. Similarly, the respondents also mostly relied on the pahanies marked as Exs.B-1 to B-27; in addition to the pahanies, the petitioner relied on the certified copy of partition deed dated 18.06.2013 marked as Ex.A-10 and whereas the respondents relied on the joint declaration dated 25.06.2013, marked as Ex.B-29. All the pahanies marked as Exs.A-1 to A-9 would show that the property was in the name of the pattedar, Laxma Reddy, but name of the enjoyer in Column No.13 was shown as K. Janardhan Reddy, K. Kona Reddy and K. Sudarshan Reddy, respondents 2 to 4. Similarly, pahanies relied on by the respondents also go to establish that they are in enjoyment of the property, however, the pahanies or adangals are not strong piece of evidence to establish title to the property as they are only entries in revenue records. It is settled law that entries in revenue records would not create or confer any title in immovable property as held by the Apex Court in ***Jattu Ram Vs. Hakam Singh and others***^[3]. Moreover, the adangals or pahanies are being prepared by the village karnam, patwari and other revenue officials while discharging their duties and the owner has no role to play in preparation of adangals and sometimes the patwari may record the names of unconcerned persons also. The entries in revenue records are the corroborative piece of evidence but when such

evidence is not satisfactory, the Court cannot give much credence to such entries. In ***Baleshwar Tewari (dead) by L.Rs. and others Vs. Sheo Jatan Tewari and others***^[4], the Apex Court in Para 18 of the judgment made strong observations about mode of making entries in revenue records, which is as follows:

“18.Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the land he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills.”

20. If the observations made by the Apex Court in ***Baleshwar Tewari***⁴ are taken into consideration, it is *ex-facie* evident that the entries in pahanies were made by the Village Assistant or Patwari *etc.*, according to his whims and fancies otherwise question of making different entries for different years do not arise.

21. If really, the property is continuing as joint even for the agricultural years 2010-2013, the question of recording the names of respondents 2, 3 and 4 in the pahanies for different years would not arise. The variation in the entries in pahanies marked as Exs.A-1 to A-9 and Exs.B-1 to B-27 would indicate as to how the Village Assistant or Village Patwari recorded entries. Therefore, much credence cannot be given to those entries to conclude *prima-facie* that the land was in joint possession and enjoyment of the petitioner and respondents 1 to 11. In any view of the matter, it is an undisputed fact that father of the petitioner was allotted Ac.60.36 guntas in the partition *vide* partition decree in O.S. No.470 of 1978, marked as Ex.A-9. After death of

Konda Laxma Reddy, the petitioner and other *coparceners* succeeded the estate of late Konda Laxma Reddy. In the absence of any partition in accordance with law, the petitioner is not entitled to claim share in it. However, the respondents, contention is that there is a partition among the *coparceners* and, in the partition, the schedule property was allotted to respondents 2 to 4 relinquishing their rights in the land in Survey Nos.81 and 82 of Balapur village in a total extent of Ac.31.11 guntas *i.e.*, schedule property. Ex.A-10 is the partition deed among K. Janardhan Reddy K. Kona Reddy and K. Sudarshan Reddy, defendants 2 to 4. The contents of the partition deed show that K. Laxma Reddy was allotted land by virtue of compromise decree, Ex.A-9 and that the suit schedule property for an extent of Ac.31.11 guntas was in possession of K. Laxma Reddy. However, in the year 1980, after death of K. Laxma Reddy, they got partitioned the property and entered into an agreement and the schedule property has been allotted to the respondents 2 to 4 but this document is not much relevant for deciding the real controversy between the parties since the very partition and relinquishment is in dispute. Though the respondents contended that the petitioner, respondents 1 and 5 and husband of 6th respondent relinquished their right in the property they did not produce any piece of evidence except Exs.B-29. Therefore, the alleged relinquishment of right in the schedule property by the respondents 2 to 4 is not established. One of the contentions of learned counsel for the respondents is that a partition can be oral and placed reliance on the judgment of the Apex Court in ***Digambar Adhar Patil Vs. Devram Girdhar Patil (died) and another***^[5]; wherein the Apex Court held that partition need not be by way of registered document and it should be affected even by family arrangement, it is not necessary that the partition should be effected by a registered partition deed; even family arrangement is enough to effectuate partition to confer right to a separate share and enjoyment

thereof. In ***Digambar***⁵, the Apex Court in Para 5 of the judgment held as follows:

“5. The entries in the Record of the Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the respondent and his brother to prove the factum of partition. Even in the evidence of Ram Chander, he clearly stated that there was a partition but he could not give the date and year in which the partition was effected nor the deed of the partition was produced. Under the Hindu Law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Under those circumstances, when the factum of partition was evidenced by entries in the Record of Rights, which was maintained in official course of business, the correctness thereof was not questioned, it corroborates the oral evidence given by the brother and lends assurance to accept it.”

22. There is no quarrel about the law declared by the Apex Court but proof of partition would arise only during course of trial, at this stage it is not relevant. Learned counsel for the respondents also drawn attention of this Court to another judgment of the Apex Court in ***Roshan Singh and others Vs. Zile Singh and others***^[6], wherein the Apex Court while dealing with Section 17(1)(b) and Section 49 of the Registration Act, 1908 drawn a distinction between family arrangement and partition. A document though un-registered can however be looked into for the limited purpose of establishing a severance in status, though that severance would ultimately affect the nature of the possession held by the members of the separated family as co-tenants. The document in the instant case can be used for the limited and collateral purpose of showing that the subsequent division of the properties allotted was in pursuance of the original intention to divide. In any view, the document was a mere list of properties allotted to the shares of the parties.

23. The law laid down by the Apex Court in **Roshan Singh⁶** is applicable when a question of admissibility of a document arises but no document is produced before this Court or trial Court to establish family arrangement as pleaded by the respondents.

24. 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 Apex court in **Colgate Palmolive (India) Limited Vs. Hindustan Lever Limited^[7]**, observed that the other considerations which ought to weigh with Court hearing the application or petition for the grant of injunction are as follows:

- (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.

25. Similarly, the trial Court relied on the judgment of Apex Court in

Dalpat Kumar and another Vs. Prahlad Singh and others^[8],

wherein it was 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."

26. 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***^[9], the Apex Court, while dealing with Order XXXIX 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."

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

28. The Apex Court and this Court had an occasion to deal with similar circumstances in ***Yashoda Super Specialty Hospitals Vs. Yashoda Medicare and Research Centre (P) Limited and***

another^[10], ***United Commercial Bank Vs. Bank of India***^[11] and ***M/s. Julien Educational Trust Vs. Sourendra Kumar Roy and others***^[12], succinctly held that prima-facie case means a case to go for trial, arguable case to go for trial involving serious question.

29. In view of the law declared by Apex Court in the decisions referred *supra*, 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. Thus, in view of foregoing discussion, we must necessarily examine the case of the petitioner.

30. According to the petitioner, he is in joint possession and enjoyment of the property and that there was no partition, however, the respondents relied on the plaint copy in O.S. No.537 of 1989 filed by N. Savithri and M. Susheela, B. Sumithra and K. Uma Maheswari, the respondents 10 to 13 respectively on the file of Additional Sub-Judge, Ranga Reddy District at Saroornagar, Hyderabad, which shows that the above respondents claimed share in Ac.60.36 guntas which was allotted to father of the petitioner, since the property continued to be the joint property. In the above suit, K. Sudarshan Reddy, 4th respondent herein filed written statement contending that the land in survey No.145/0 measuring an extent of Ac.14.11 guntas has already been sold. The written statement filed by 5th defendant therein was adopted by defendants 1, 3, 4, 6 to 8 in the said suit, whereas the 2nd defendant in the said suit filed a separate written statement raising several contentions regarding sale of several extents of land, more particularly, contending that defendants 3 to 5 therein got executed a lease agreement in the presence of plaintiff on 20.11.1982 and that the land in Survey No.145, in an extent of

Ac.14.11 guntas, was sold to Veggala Rao and received entire consideration of Rs.1,28,000/-. Similarly, the land in Survey No.144 was also sold and the defendants are only having 1/14th share in the said land. The sale deed executed by P. Malla Reddy, K. Tirupathi Reddy, K. Janardhan Reddy and K. Kona Reddy and K. Sudarshan Reddy, N. Savithri, M. Sushila, B. sumitra, K. Uma Maheswari, P. Malla Reddy and P. Srisailam Reddy dated 28.01.2006 shows that Ac.10.23 guntas was sold to V. Narasimha Reddy, P. Ganna Reddy, P. Narasimha Reddy, P. Hari Kishan Reddy. These documents, at best, show that part of the property was sold by the respondents to third parties. However, the sale deed dated 27.01.1987 also shows that the K. Laxmamma, K. Ramachandra Reddy, K. Tirupathi Reddy executed a sale deed in favour of M. Venkata Rama Rao, conveying property of an extent of Ac.2.16 guntas in Survey No.145/B. Similarly, K. Janardhan Reddy and K. Prabhakar Reddy also executed another sale deed dated 27.01.1987 in favour of daughter of M. Sumati conveying title in an extent of Ac.2.15 guntas in Survey No.145/B. Thus, major part of the land allotted to Laxma Reddy was sold by some of the respondents herein, purchasers are in possession of the respective shares but these documents were not produced before the trial Court to prove sale of the property to different persons, who are not parties to the present suit. In any view of the matter, the relief claimed in I.A. No.2338 of 2013 is only to restrain the respondents from alienating the property. Alienation during pendency of the suit is *voidable* and hit by Section 52 of Transfer of Property Act. Therefore, no injunction need be granted according to the contentions of the respondents.

31. The relief claimed in the petition is limited to restrain the respondents from alienating the property; if any alienation is made, it is subject to the result of the suit, the trial Court declined to grant temporary injunction as the suit is for partial partition and not

maintainable.

32. In a recent judgment of the Apex Court in ***K.N. Aswathnarayana Setty (died) through L.Rs and others Vs. State of Karnataka and others***^[13], the Apex Court had an occasion to deal with the similar situation and concluded that the transactions entered during pendency of the litigation are hit by the principle of *lis-pendens*. It was further held therein as follows:

“6. Doctrine of *lis pendens* is based on legal maxim '*ut lite pendente nihil innovetur*' (During litigation nothing new should be introduced). This doctrine stood embodied in Section 52 of the Transfer of Property Act 1882. The principle of '*lis pendens*' is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court. The transferee cannot deprive the successful Plaintiff of the fruits of the decree if he purchased the property *pendente lite*.”

33. The Apex Court in ***Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others***^[14], concluded that such purchases during pendency of the suit are bound by the result of the suit.

34. In ***Kedarnath Lal Vs. Sheonarain***^[15], the Apex Court held as follows:

“The purchaser pendent elite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must bind the person deriving his

right, title and interest from or through him. This principle is well illustrated in *Radhamadhu Holder Vs. Monohar* (MANU/PR/0015/1888) where the facts were almost similar to those in the instant case. It is true that Section 52, strictly speaking, does not apply to involuntary alienations such as Court sales but it is well established that the principle of *lis pendens* applies to such alienations.”

35. In a recent judgment of the Apex Court in ***Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim Khan and others***^[16], the Apex Court laid down the principles governing grant of interim injunction and with regard to circumstances when the order of trial Court be interfered with; it further extracted Paragraph 14 of the judgment in the case of ***Wander Limited Vs. Antox India Private Limited*** {1990 Supp. SCC 727} and the relevant portion of it reads as under:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial Court’s exercise of discretion.”

36. In another judgment of the Apex Court in ***Seema Arshad Zaheer and others Vs. Municipal Corporation of Greater Mumbai and others***^[17], when interference by the appellate Court, with the discretion exercised by the trial Court, is justified and ruled as follows:

“29. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the Plaintiff: (i) existence of a *prima facie* case as pleaded, necessitating protection of the Plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the Plaintiff's rights is compared with or weighed against the need for protection of the Defendant's rights or likely infringement of the Defendant's rights, the balance of convenience titling in favour of the Plaintiff; and (iii) clear possibility of irreparable injury being caused to the Plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the Plaintiff's conduct is free from blame and he approaches the court with clean hands.

30. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorised and not illegal. In such cases, where *prima facie* case is made out, the balance of convenience automatically tilts in favour of the Plaintiff and a Plaintiffs injunction will be issued to preserve status quo.”

37. In view of the principles laid down by the Apex Court *supra*, the appellate Court shall not interfere with the orders passed on primarily exercising discretion unless such discretion was exercised by the trial Court palpably on wrong appreciation, apart from that alienation if any made, the decree if any obtained during pendency is enforceable against subsequent purchaser under Section 19 of the Specific Relief Act, 1963. Hence, the alienation, if any, is only subject to the result of the suit and the purchasers would not get absolute title in the property purchased by them, during pendency of the suit. Therefore, we find no *prima-facie* case in favour of the petitioner.

38. Besides proof of establishment of *prima-facie* case to succeed in the main suit, the petitioner is also required to establish balance of convenience, irreparable loss and injury and conduct of the party, who approached the Court is also relevant in view of the judgments referred *supra*. Normally, when an interim-injunction is sought for, it is for the party to approach the Court with clean hands to claim an equitable

discretionary relief under Order XXXIX Rules 1 and 2 of C.P.C. but in the present case, the petitioner did not approach the Court with clean hands and invented a story, failed to establish *prima-facie* case and that too the balance of convenience is not in his favour for the reason that the property was already sold to 14th respondent and even if the 14th respondent is not restrained from alienating the property during pendency of the suit, the alienation is subject to result of the suit. Therefore, balance of convenience is only in favour of the respondents and not against the petitioner. If for any reason, no injunction is granted in favour of the petitioner what would be the substantial injury to be caused to the petitioner is not explained anywhere. In any view of the matter, in case, the suit is decreed, the 14th respondent can claim equities to allot the property purchased by him to the share of his vendor. Therefore, no loss would be caused to the petitioner, if no injunction is granted and on the other hand, the 14th respondent would sustain irreparable loss having invested huge amount to purchase the property raising constructions *etc.*, therefore, we find no legal infirmity in the order passed by the trial Court declining to grant temporary injunction. Even if the additional evidence is received, the situation is the same and there is no substantial change except to prove that some of the properties were alienated. Therefore, taking into consideration of the totality of the circumstances, we find it difficult to interfere with the discretion exercised by the trial Court in declining to grant temporary injunction during pendency of the suit. Hence, order passed by the trial Court in I.A. No.2338 of 2013 is hereby confirmed holding this point in favour of the respondents and against the petitioner.

39. **POINT No.2:** The petitioner sought for the relief of temporary injunction during pendency of the suit restraining 14th respondent from interfering with the joint possession and enjoyment of the property alleging that he is trying to interfere with the joint possession and

enjoyment of the property by the petitioner and other respondents but the trial Court declined to grant interim injunction on the ground that the petitioner did not make out *prima-facie* case to succeed in the main suit and that too the suit was only for partial partition; the trial Court discussed about evidentiary value of the entries in pahanies which would go to show the possession of the individual including deceased K. Laxma Reddy even after his death but much credence cannot be attached to the entries in pahanies in view of the principles laid down by the Apex Court in **Jattu Ram³**.

40. In order to claim permanent injunction restraining the 14th respondent from interfering with his possession and enjoyment of the property, it is for the petitioner to prove that he is in possession and enjoyment of the property exclusively or in joint possession of the property along with others and that 14th respondent made any attempt to infringe or invade the legal right of the petitioner. Here, it is not the case of the petitioner that he is in exclusive or joint possession of the property along with other coparceners but the respondents 1 to 4 denied about the joint possession alleging that this property was allotted to the share of respondents 2 to 4 and that a partition deed was executed, marked as Ex.A-10, dated 18.06.2013 and in view of the said partition the property mentioned therein was allotted to the share of K. Kona Reddy, which is an extent of Ac.10.10 guntas. A schedule property was allotted to the share of K. Janardhan Reddy; B schedule property was allotted to K. Kona Reddy; C schedule property was allotted to K. Sudarshan Reddy but the petitioner is not a party to the said partition deed since the petitioner and others allegedly relinquished their rights in the property and released their share but no document is produced evidencing relinquishing or release of rights of the petitioner and other coparceners, however, as on today, the petitioner is not in joint possession and enjoyment of the property and no piece of paper is produced to establish his joint possession, *prima-*

facie.

41. The trial Court, after discussing the entire material available on record, concluded that it is not a fit case to grant temporary injunction exercising its discretion. When the trial Court came to a conclusion that it is not a fit case to grant temporary injunction by exercising discretion unless some additional material is brought on record to enable this Court to exercise discretion to grant temporary injunction, this Court cannot interfere with the order passed by the trial Court. The trial Court also observed therein that the petitioner failed to establish *prima-facie* case, balance of convenience and irreparable loss. Admittedly, the 14th respondent purchased property from the respondents 2 to 4 under different documents and took possession of the property; in such case, he is entitled to continue in possession of the property but the alienation, if any, made is only subject to result of the suit and the 14th respondent is entitled to claim any equities but not any amount incurred by him towards making improvement on the property.

42. In view of foregoing discussion, we find no ground to grant temporary injunction restraining the 14th respondent from interfering with his possession and enjoyment of the property, as the order under challenge does not call for interference with the order passed by the trial Court exercising discretion under Order XXXIX Rules 1 and 2 of C.P.C. Hence, the finding of the trial Court is hereby confirmed holding this point in favour of 14th respondent and against the petitioner.

In the result, both the Civil Miscellaneous Appeals are dismissed confirming the orders and decreetal orders dated 28.07.2014, passed in I.A. Nos.2338 and 2339 of 2013 in O.S. No.906 of 2013 by the learned II Additional District Judge, Ranga Reddy District at L.B. Nagar.

In consequence, miscellaneous petitions, if any, pending in these Appeals, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY,

J
Date:01-05-2015.
Dsh

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL Nos.867 & 868 OF 2014

(Common Judgment of the Division Bench delivered by
Hon'ble Sri Justice M. Satyanarayana Murthy)

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Date.01-05-2015

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- [\[1\]](#) (1994) 4 SCC 294
 - [\[2\]](#) 2008 (3) ALD 39
 - [\[3\]](#) (1993) 4 SCC 403
 - [\[4\]](#) AIR 1997 (SC) 2089
 - [\[5\]](#) AIR 1995 SC 1728
 - [\[6\]](#) AIR 1988 SC 881
 - [\[7\]](#) AIR 1999 SC 3105
 - [\[8\]](#) AIR 1993 SC 276
 - [\[9\]](#) AIR 2010 SC 296
 - [\[10\]](#) 2010 (6) ALT 466
 - [\[11\]](#) AIR 1981 SC 1426
 - [\[12\]](#) 2010 (1) ALT 58 (SC)
 - [\[13\]](#) 2013 (14) SCALE 565
 - [\[14\]](#) 1995 (6) SCC 50
 - [\[15\]](#) AIR 1970 SC 1717
 - [\[16\]](#) 2013 (9) SCC 221
 - [\[17\]](#) 2006 (5) ALT 33 SC

