

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CIVIL MISCELLANEOUS APPEAL Nos. 131 AND 422 of 2015

Between:

Marri Anand Reddy and others .. Appellants

AND

Marri Shiva Shanth Reddy and others .. Respondents

DATE OF ORDER PRONOUNCED: 29-09-2015

HON'BLE SRI JUSTICE R. SUBHASH REDDY

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be Marked to Law Reporters/Journals.
3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos. 131 and 422 of 2015

COMMON JUDGMENT: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Being aggrieved by the dismissal order dated 04.12.2014 in I.A. No.473 of 2013 in O.S. No.220 of 2013 on the file of the I Additional District Judge, Ranga Reddy District at L.B.Nagar (for brevity, 'the Court below'), the petitioner in the interlocutory application, who is also the plaintiff in the original suit, preferred the former civil

miscellaneous appeal; whereas, the latter civil miscellaneous appeal is preferred by respondent Nos.4 and 5 in the interlocutory application and defendant Nos.4 and 5 in the original suit. The court below by the aforesaid order, refused to grant interim injunction restraining the respondents-defendants from alienating the petition 'A' and 'B' schedule properties.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the original suit.

3. In the context of controversy between the parties, for better appreciation, it would be appropriate to refer to the extents and the survey numbers thereof described in petition 'A' and 'B' schedules. We feel it appropriate to state at this stage itself, that the plaintiff sought the relief of partitioning the plaint 'A' and 'B' schedule items situated at Mailardevepalli village, Rajendranagar Mandal, Ranga Reddy District, and for allotment of his separate share and to put him in possession of the extents that would fall to his share.

4. Adverting to the fact-situation, one Marri Achi Reddy was the ancestor of the parties. It is not in dispute that the said Achi Reddy purchased the suit lands in the name of his third son, Marri Veera Reddy, a minor by then, in the year 1938. The other three sons are Marri Bala Krishna Reddy, Marri Agi Reddy and Marri Ramalinga Reddy. The death of said Achi Reddy took place on 20.09.1955. When disputes arose among the brothers, Marri Veera Reddy filed O.S. No.99 of 1968 on the file of the Chief Judge, City Civil Court, Hyderabad, against his other three brothers and Marri Tuljamma, their mother, for partition of plaint schedule properties, which ended in compromise and the compromise decree was passed by virtue of a petition filed under Rule 3 of Order 23 of the Code of Civil Procedure, 1908 (for short, 'CPC'). No separate interlocutory application number is forthcoming concerning the petition under Rule 3 of Order 23 of CPC. According to the plaintiff, all the four brothers, Bala Krishna Reddy, Agi Reddy, Veera Reddy and Ramalinga Reddy, were allotted

shares in the ratio of 35%, 35%, 18% and 12% respectively, and as per the compromise decree, the parties were required to sell the property jointly within three years and to share the sale proceeds as per the ratio.

5. While the things stood thus, one of the sons of Bala Krishna Reddy, Vaman Reddy, filed a suit in O.S. No.546 of 1982 on the file of the District Court, Ranga Reddy District, for partition of plaint schedule items therein, which include the plaint schedule items herein, also seeking for allotment of 35% share belonging to his father Bala Krishna Reddy. When that suit was filed, all the four brothers, Bala Krishna Reddy, Agi Reddy, Veera Reddy and Ramalinga Reddy, were alive and they were arrayed as defendant Nos.1, 5, 8 and 9 respectively. The said suit also ended in compromise by virtue of the compromise recorded in I.A. No.61 of 1983 filed under Rule 3 of Order 23 of CPC and a compromise decree was passed on 29.01.1983. Subsequently, Bala Krishna Reddy died on 02.09.1985, Marri Chandrapal Reddy died on 26.10.2002, Agi Reddy died on 02.09.1988, and Veera Reddy died in the year 1988, and their respective shares devolved upon their heirs.

6. The plaintiff, claiming that the share of the coparceners were duly determined, but the lands were not divided by metes and bounds according to their respective shares and despite demanding for division by metes and bounds in proportion to their allotted shares in respect of suit schedule lands, laid the suit and interlocutory application, I.A. No.473 of 2013 requesting the court to injunct the respondents-defendants from alienating the suit schedule lands.

7. Defendant Nos.1 and 4 filed common counter expressing no-objection for granting the relief. Thus, virtually, defendant Nos.1 and 4 have been sailing with the plaintiff. Defendant Nos.5, 6, 8, 9 and 10 remained *ex parte* before the Court below. Defendant Nos.2, 3 and 7 filed their common counter. Defendant Nos.1 and 4 stated that the distribution of property is as per the compromise done way back in the

year 1960 and the same was accepted by all the parties. They admit receipt of notices sent by the plaintiff. However, they stated that the fixation of exact boundaries by metes and bounds and equitable distribution of the land as per the terms of memorandum of understanding have to be finalized.

8. In their counter, defendant Nos.2, 3 and 7 traversed the pleas raised by the plaintiff stating that the plaintiff schedule properties were already partitioned twice and mutation registry was also effected mentioning the names of the parties and the extents fallen towards their shares respectively, in the revenue records and the suit is, therefore, devoid of merit and not maintainable. Defendant Nos.2, 3 and 7 also referred to certain instances, wherein the grand-father of the plaintiff and father of defendant Nos.2 and 3 entered into an agreement of sale on 02.08.1971, in respect of land admeasuring Acs.34-13 guntas in favour of M/s. Hyderabad Building and Planning Organisation and even the subsequent transfer of extents in favour of various persons including the purchasers, who have constructed houses and residing therein. It is according to them that pursuant to the compromise decree passed in O.S. No.99 of 1968, all the four brothers disposed of and transferred most of the land jointly and individually in favour of third party purchasers. Likewise, the joint family members including the father of the plaintiff, Marri Chandrapal Reddy executed agreement of sale dated 21.02.1983 in favour of Satyanarayana Soni and others to develop the land admeasuring Acs.143-00 guntas covered by Sy.Nos.9, 10, 14, 22 and 28 and partnership deed was also entered between the family members in favour of Satyanarayana Soni and others to develop and dispose of the subject matter of the land. Likewise, an agreement was executed in favour of one Rahana Bai on 24.02.1989 in respect of Acs.28-00 guntas of land covered by Sy.Nos.12 and 13 and also executed registered irrevocable general power of attorney. According to them, the proceedings in U.L.C. Appeal No. Hyd/37/06 dated 28.01.2008

would clearly establish that most of the land was sold in favour of third parties since 29.09.1980 and since the plaintiff approached this court with unclean hands by suppressing the real facts, sought to dismiss the petition.

9. It appears that defendant Nos.5, 6, 8 and 9 have not filed their counters. Strangely, defendant Nos.4 and 5 preferred C.M.A. No.422 of 2015 also aggrieved by the very same order, which is challenged by the plaintiff.

10. During enquiry, plaintiff exhibited Exs.P.1 to P.9 to substantiate his stand; and on the other hand, defendants exhibited Exs.R.1 to R.10 in order to condemn the case of the plaintiff and to substantiate their own case. The Court below formulated the point for determination as per the relief sought for in the interlocutory application. On appraisal of documentary evidence filed by both sides, referring to the allotment of extents in Sy.Nos.9, 10, 12, 13, 14, 15, 16, 17, 20, 21, 22, 167, 18, 19, 23, 24, 26, 28, 29 and 30 as per the compromise decree passed in O.S. No.99 of 1968 and also the compromise decree in O.S. No.546 of 1982 showing the extents allotted to the parties belonging to each of the branches observing that;

first, if really partition was not effected by metes and bounds under the compromise decrees in O.S. Nos.99 of 1968 and 546 of 1982, what is left for the plaintiff is to take steps for dividing the properties by metes and bounds as per the compromise decrees;

second, the conduct of the parties in jointly executing an agreement of sale on 02.08.1971 in respect of Acs.34-13 guntas in Sy.Nos.13, 14, 17, 18, 19, 20, 21, 23 and 29 in favour of Hyderabad Building and Planning Organisation, represented by its Managing Director C.T. Shastri, pursuant to the compromise decree dated 31.07.1970 in O.S. No.99 of 1968 and the said organization, in turn, conveying the extents therein in favour of intending purchasers who have also constructed houses and residing therein;

third, execution of agreement of sale dated 21.02.1983 executed by father of the plaintiff by name Chandrapal Reddy and nine others in favour of Satyanarayana Soni and four others under Ex.R.8, which was executed in pursuance of compromise decrees in O.S. Nos.99 of 1968 and 546 of 1982, in which there is reference to another

agreement dated 16.02.1981 entered into by the father of the plaintiff and nine others in favour of M/s. Madhuri Enterprises in respect of the same lands and partnership deed dated 19.02.1983 under Ex.R.9 concerning the extent of Acs.143-31 guntas in favour of Satyanarayana Soni and four others;

fourth, execution of general power of attorney on 24.02.1989 under Ex.R.10 by the father of the plaintiff and seven others appointing Mr. Hakeemuddin as general power of attorney to deal with lands to an extent of Acs.28-00 guntas in Sy.Nos.12 and 13 under Ex.R.10;

fifth, execution of Ex.R.1 dated 02.12.2011, Ex.R.2 dated 15.05.2012, Ex.R.3 dated 15.03.2012, Ex.R.4 dated 02.12.2011, Ex.R.5 dated 15.05.2012 and Ex.R.6 dated 15.05.2012 by the plaintiff along with his brother and sister alienating distinct extents of 503.04 square yards in Sy.No.15, 308.51 square yards in Sy.No.15, 303.31 square yards in Sy.No.15, 503.04 square yards in Sy.No.15, 318.41 square yards in Sy.No.15 and 313.22 square yards in Sy.No.15 to the vendees mentioned therein;

held that if really the suit lands were not partitioned by metes and bounds as per the compromise decree, the parties would not have entered into sale transactions and other transactions mentioned in the above and also commenting that the plaintiff, since did not mention the aforesaid transactions, held that the plaintiff approached this Court with unclean hands and, thereby did not incline to accede to the request.

11. The Court below also observed that, though, the parties have entered into a memorandum of understanding under Ex.P.5 executed on a stamp purchased on 17.05.2011 in respect of suit schedule properties, in which it was stated that the plaintiff has made a representation for dividing the land by metes and bounds and until then further sales and alienations be stopped by all the coparcenary members so as to settle the matter amicably and even subscribing their signatures to Ex.P.5, still, the plaintiff himself sold part of schedule properties as reflected from Exs.R.2 to R.6, commented that the conduct of the plaintiff is not free from blame.

12. The court below referred to the decisions on which the learned counsel for the defendants placed reliance in **Duraisamy**,

Lakshmanan and Venkatesh v. N. Ethirajulu, N.Gopal, Janaki, Mohanambal, Santhi, R.Jagannathan, Jayakanna,

B. Ramalingam, Sarasu and S.Perumal Naidu^[1] of the Madras High Court to the effect that the court cannot grant the discretionary relief of specific performance in the absence of clear evidence and proof of the agreement, more particularly, when the plaintiff has come forward seeking relief with unclean hands and sought to apply the said proposition herein has also suppressed the alienations herein, and, thus, approached the court with unclean hands. The court below has also referred to the decision of the Hon'ble Supreme Court in **Seema Arshad Zaheer and others vs. Municipal Corporation of Greater Mumbai and others**^[2], wherein the Hon'ble Supreme Court while reiterating the traditional requirements of the existence of *prima facie* case, balance of convenience and irreparable loss, has also insisted that the court can exercise the discretionary relief only when the plaintiff's conduct is free from blame. The court below holding that not only the indispensable ingredients for grant of injunction have not been made out by the plaintiff, but also observing that the plaintiff, since suppressed the material facts, is not entitled to the equitable relief of injunction, and thereby, dismissed the petition.

13. In the grounds of appeal, the plaintiff in C.M.A. No.131 of 2015 stated that the court below has not properly appreciated Ex.P.5 and arrived at a wrong conclusion. According to the plaintiff, Ex.P.5 states that earlier compromise decrees were not given effect to and the property is continued to be in joint possession of all the parties and they mutually agreed to partition and survey the property by metes and bounds.

14. It is stated that the finding recorded by the court below that the plaintiff has alienated the property contrary to the memorandum of understanding is improper as the properties alienated by him are specifically exempted under clause 4(d) of Ex.P.5 and even the

defendants were also permitted to alienate certain portions of the land by virtue of the very same exemption under Ex.P.5.

15. He states that, though, the shares of coparceners are duly determined as per the compromise decrees, but they were not given effect to, due to which, the defendants are trying to illegally alienate the properties to the third parties by depriving his legitimate right over the property, which, thus, favours him in proving the *prima facie* case and balance of convenience lying in his favour, which the court below totally sidelined.

16. The plaintiff also states that whenever the compromise decrees are not given effect to and if any dispute arises between the parties for effecting partition by metes and bounds, the only remedy is to file a suit for partition, which principle, the court below has totally ignored.

17. The plaintiff also states that the court below, somehow, made an incorrect observation that he (plaintiff) suppressed relevant facts, and thereby has not properly appreciated the fact that Ex.P.5 exempted the properties alienated by him. Thus, sought to set aside the order passed by the court below and to grant injunction prohibiting the defendants from alienating the plaint schedule properties.

18. In the grounds of appeal in C.M.A. No.422 of 2015, the appellants, who are respondent Nos.4 and 5-defendant Nos.4 and 5, respectively, raised identical grounds mainly touching Ex.P.5 put forth by the plaintiff in C.M.A. No.131 of 2015 and pleaded for the relief thus:

"For the reasons stated above and those reasons that may be raised at the time of hearing, the appellant herein prays that this Hon'ble court may be pleased to allow the appeal by setting aside the Judgment and Decree passed by the Hon'ble Court of I Additional District Judge, Ranga Reddy District, in I.A. No.473 of 2013 in O.S. No.220 of 2013, dated 04.12.2014 and pass such other order or orders as this Hon'ble court deem fit and proper in the circumstances of the case."

19. The grounds agitated by defendant Nos.4 and 5 (appellants in C.M.A. No.422 of 2015) are substantially identical with the grounds mentioned in the other C.M.A. preferred by the plaintiff. Thus, it is clear that the defendant Nos.4 and 5 are sailing with the plaintiff, though, they belong to the branch of Marri Agi Reddy, being his sons.

20. Heard learned Senior Counsel-Sri D. Prakash Reddy, assisted by Sri G. Kalyan Chakravarthy, learned counsel for the appellant (plaintiff) in C.M.A. No.131 of 2015; learned Senior Counsel-Sri S. Niranjan Reddy, assisted by Sri Rubaina S. Khatoon, learned counsel for appellants in C.M.A. No.422 of 2015; and learned Senior Counsel-Sri Vedula Venkata Ramana, assisted by Sri A. Narasimha Rao, learned counsel for the respondents in both the appeals.

21. Learned counsel for the plaintiff would submit that though the compromise was effected in O.S. No.99 of 1968 and a decree was passed in terms of the compromise, and again, in the suit in O.S. No.546 of 1982, yet another compromise decree was passed between the parties, but the properties constituting subject matter in both the suits were not divided by metes and bounds and they were kept in joint enjoyment of the parties and since the defendants are trying to alienate 'A' and 'B' schedule properties, the plaintiff is compelled to approach the Court seeking the relief of partition and allotment of his share and sought the consequential relief of interim injunction by filing I.A. No.473 of 2013. Learned counsel would submit that the contents of compromise decrees passed in the earlier suits and the memorandum of understanding arrived at by the parties as in Ex.P.5 would clinch the issue substantiating the stand of the plaintiff, and, therefore, the Court below was not right in ignoring the purport of Ex.P.5 and refusing to grant injunction ascribing mala fide's to the plaintiff.

22. Learned counsel for the defendants would submit that the compromise decrees passed in O.S. Nos.99 of 1968 and 546 of 1982 were accepted and acted upon and the question of demanding partition and instituting suit for relief of partition once again does not arise and that the very frame of the suit is incorrect, and, therefore, the suit is not maintainable. Learned counsel also would submit that the conduct of the plaintiff in alienating certain properties even subsequent to entering into Ex.P.5-memorandum of understanding by conveying certain extents covered by the petition schedules under registered sale deeds is worth condemning and that conduct, certainly, disentitles the plaintiff from seeking the equitable relief of injunction. In order to fortify his submissions, learned counsel placed reliance on decisions of the Hon'ble Supreme Court in **Rachakonda Venkat Rao and others Vs. R. Satya Bai (dead) by Lr. and another**^[3] and **Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others**^[4].

23. The relief sought in I.A. No.473 of 2013 has been to injunct all the defendants, including the appellants in C.M.A. No.422 of 2015, who are respondent Nos.4 and 5 in the said I.A. and defendant Nos.4 and 5 in the original suit, from alienating the plaint 'A' and 'B' schedule properties. Therefore, establishing the three traditional requirements of strong *prima facie* case, balance of convenience lying in favour of the plaintiff and the irreparable loss he would sustain in case injunction is refused, is *sine quo non*. Since the relief of injunction is an equitable relief, to entitle for the said relief, invariably, the plaintiff has to approach the Court with clean hands.

24. Adverting to admitted facts, filing of O.S. No.99 of 1968 by Marri Veera Reddy against his three brothers-Marri Balakrishna Reddy, Marri Agi Reddy and Marri Rama Linga Reddy and their mother-Tuljamma and entering into compromise and filing a petition under Rule 3 of Order 23 CPC agreeing to pass a compromise decree by the

Chief Judge, City Civil Court, Hyderabad, and passing of a compromise decree on 31.07.1970 is not in dispute. Even filing of compromise petition under Rule 3 of Order 23 CPC in I.A. No.61 of 1983 in O.S. No.546 of 1982 on the file of the District Judge, Ranga Reddy District, Secunderabad by Dr. Marri Vaman Reddy (defendant No.2 herein) and his father-Marri Balakrishna Reddy, his brothers-Shiv Shant Reddy (defendant No.1 herein), Marri Chandrapal Reddy and Marri Narotham Reddy (defendant No.3 herein), his junior paternal uncle-Marri Agi Reddy, and the sons of Marri Agi Reddy, viz., Vasanth Reddy and Jayanth Reddy (defendant Nos.4 and 5 herein), and his other junior paternal uncles-Marri Veera Reddy and Marri Ramalinga Reddy (defendant No.10 herein) and entering into compromise and passing of a compromise decree by the said Court is also not in dispute. Even entering into memorandum of understanding by Dr. Marri Shiv Shant Reddy, Dr. Marri Vaman Reddy, Marri Narotham Reddy, Marri Anand Reddy, Marri Ashok Reddy, Marri Vasanth Reddy and Marri Jayanth Reddy, who are the parties herein on 17.05.2011 is also not in dispute. Thus, the recitals of these three documents attain great significance in the context of resolving the limited controversy in the interlocutory application filed before the Court below, and incidentally, in the instant civil miscellaneous appeals. This apart, the other documents marked on behalf of the plaintiff and defendants respectively, also require consideration to draw inference as to the conduct of the parties pursuant to passing of the compromise decrees in both the suits mentioned above and the memorandum of understanding arrived at as in Ex.P.5 in assessing the stands taken by the plaintiff and the defendants respectively.

25. As seen from the compromise decree passed in O.S. No.99 of 1968, the mother of the four brothers-Balakrishna Reddy, Agi Reddy, Veera Reddy and Ramalinga Reddy was allotted any share, but it is recited therein that she is entitled only for the maintenance and the plaintiff and defendant No.3 therein (Veera Reddy and Ramalinga

Reddy) were responsible for her maintenance.

26. It appears that an extent of Acs.107-00 gts called Bondalaguda lands situated at Mailardevpalli village, Hyderabad Urban Taluq, was not the subject matter of the suit in O.S. No.99 of 1968, as can be gathered from the contents of paragraph No.1 of the compromise decree. Defendant Nos.1 and 2 therein (Balakrishna Reddy and Agi Reddy) were allotted 'B' schedule lands covered by Sy.Nos.9, 10, 12, 13, 14, 15, 16, 17 and 167 called 'Jikalagutta lands' situated at Mailardevpalli village consisting of total extent of Acs.128-28 gts as owned and possessed by defendant Nos.1 and 2 (Balakrishna Reddy and Agi Reddy). Whereas, 'A' schedule property admeasuring Acs.6-33 gts and another Acs.6-25 gts comprised of Sy.Nos.170, 103/3, 168, 169, 171, 172 and 173 respectively, situated at Bandlaguda village, Hyderabad Urban Taluq, allotted to the plaintiff and defendant No.3 therein (Veera Reddy and Ramalinga Reddy). Concerning 'C' schedule property consisting of residential houses along with land admeasuring 2000 square yards situated at Jangammet (Falaknuma) bearing Municipal Nos.18-2-527, 18-2-528 and 18-2-521, was allotted to defendant Nos.1 and 2 therein (Balakrishna Reddy and Agi Reddy). As seen from the contents of paragraph No.6, all the parties arrived at that the plaintiff and defendant Nos.1 to 4 therein agreed that the plaintiff and defendant No.3 are entitled to 18% and 12% respectively, out of the lands admeasuring about Acs.107-00 gts known as Bondalaguda lands bearing Sy.Nos.18, 19, 23, 24, 26, 28, 29 and 30 situated at Mailardevpalli village, Hyderabad Urban Taluq and defendant Nos.1 and 2 therein were entitled to 70% share in equal proportions. Plaint 'D' schedule property consisting of single storied bungalow with RCC roof situated at Kachiguda, Tilak Road in Lingampalli, Hyderabad bearing Municipal No.13-4-5/B and plaint 'E' schedule property commission agency business at Mir-Alam Mandi, Hyderabad City standing in the name of Marri Shiv Shanth Reddy were allotted to defendant No.1 therein

(Balakrishna Reddy). All of them agreed that the said extent of Acs.107-00 gts be sold jointly and the sale proceeds so realised therefrom were to be distributed amongst them in the proportions mentioned in paragraph No.6 therein and if the said land remains unsold for a period of three years from the date of that compromise, the same was liable for division in the ratio specified in paragraph No.6 after excluding the area covered by grave yard, temple, kunta bed and disputed land. An equal burden was also cast on all of them to jointly contest, defend and take such action for removing obstacles, if any, in respect of disputed lands and divide the same in the said ratio after meeting the expenses required for the same in proportionate to their respective shares.

27. The terms also would reflect that the eldest brother of them ;would manage the said Acs.107-00 gts of land by leasing out or selling the grass grown by paying the land revenue therefor and from out of the income so realised, defendant No.1 therein agreed to pay a sum of Rs.60/- to the plaintiff, Rs.40/- to defendant No.3 as annual net lease income towards their share of 18% and 12% respectively and reciprocally defendant Nos.2 and 3 agreed that they will not interfere with the day-to-day management of the said lands except exercising and ascertaining their respective rights and interest. The plaintiff and defendant Nos.1 to 3 therein further agreed to effect necessary changes in the patta mutation of the lands as per their respective shares. Concerning the sale price of the said land, they agreed to finalise the same by mutual consultation and agreement. These have been the terms of compromise decree passed in O.S. No.99 of 1968, and, thus, it binds the parties and certainly, none of them have got any right to retract any of the contents therein. Relevant schedules with description of properties with relevant details have been mentioned in the compromise decree, which are unnecessary to advert to for the present purpose.

28. Touching the compromise decree in I.A. No.61 of 1983 in

O.S. No.546 of 1982, the memorandum of compromise appended to the said petition, in accordance with which the compromise decree was passed, shows the extents allotted to each party, i.e., plaintiff and the nine defendants therein, by showing them in schedules ‘A’ and ‘B’ by specifically mentioning that each party has given up his respective claim against all the other parties in respect of the shares of the property allotted to them. Since it has got some bearing on the controversy in the instant appeals, we would like to extract relevant details, which are as under:

‘A’ Schedule

Sy.No.	Extent Acs-gts	D.1	D.2	D.3	Plaintiff	D.4	D.5	D.6	D.7	D.8	D.9
9	14-05	-	-	-	-	-	4-28	4-28	4-28	-	-
10	16-16	3-12	3-11	3-11	3-11	3-11	-	-	-	-	-
12	13-23	-	-	-	-	-	3-35	3-35	3-24	-	-
13	15-11	3-03	3-02	3-02	3-02	3-02	-	-	-	-	-
14	15-17	-	-	-	-	-	5-09	5-08	5-09	-	-
15	15-37	3-07	3-08	3-08	3-07	3-07	-	-	-	-	-
16	20-08	-	-	-	-	-	6-30	6-29	6-29	-	-
17	15-07	3-01	3-01	3-01	3-02	3-02	-	-	-	-	-
20	1-14	1-14	-	-	-	-	-	-	-	-	-
21	1-08	1-08	-	-	-	-	-	-	-	-	-
22	1-12	1-12	-	-	-	-	-	-	-	-	-
167	4-15	2-15	-	-	-	-	2-00	-	-	-	-
	133-13		12-22								

‘B’ Schedule

Sy.No.	Extent Acs-gts	D.1	D.2	D.3	Plaintiff	D.4	D.5	D.6	D.7	D.8	D.9
18	12-09	0-34	0-34	0-34	0-34	1-27	1-27	1-27	1-27	2-08	1-20
19	15-19	1-03	1-03	1-03	1-03	1-03	1-32	1-32	1-32	2-32	1-26
23	9-24	0-27	0-27	0-27	0-27	0-27	1-05	1-05	1-05	1-30	1-04
24	20-09	1-18	1-18	1-18	1-18	1-18	2-16	2-16	2-16	3-26	3-15
26	9-36	0-28	0-28	0-28	0-28	0-28	1-06	1-06	1-06	1-34	1-08
28	11-24	0-32	0-32	0-32	0-32	0-32	1-14	1-14	1-14	2-00	1-20
29	14-31	1-00	1-00	1-00	1-00	1-00	1-28	1-28	1-28	2-26	2-01
30	13-00	0-30	0-30	0-30	0-30	0-30	1-24	1-24	1-24	2-15	1-10
	107-00		7-20							19-11	13-24

29. Thus, it is clear that the extent of Acs.107-00 guntas of Bandalagadda lands, situated at Mailardevpalli village, Hyderabad, Urban are divided and definite extents have been allotted towards the

shares of the plaintiff and defendant Nos.1 to 9 in the said suit.

30. Adverting to the memorandum of understanding entered into by Dr. Marri Shiv Shanth Reddy (defendant No.1), Dr. Marri Vaman Reddy (defendant No.2), Marri Narotham Reddy (defendant No.3), Marri Anand Reddy (plaintiff), Marri Ashok Reddy (defendant No.6), Marri Vasanth Reddy (defendant No.4) and Marri Jayanth Reddy (defendant No.5) on 17.05.2011, it would show that Anand Reddy (plaintiff herein) made a representation that the lands be divided as per metes and bounds according to the respective shares as per records and as well as the land at site and until then further sales, alienations to be stopped by all the coparcenary members to amicably settle the matter and restraining from legal interventions and that made them to resolve unanimously, and thereby, pass resolutions. They referred to Acs.60-00 gts of land covered by Sy.Nos.9, 10, 12, 13, 14, 15, 16 and 17 for survey and division by metes and bounds as per their respective shares and, in fact, they have drawn maps also stating as 'Map No.1' and 'Map No.2' and definite extents have been mentioned against the names of Shiv Shant Reddy, Vaman Reddy, Narotham Reddy, Anand Reddy and Ashok Reddy in resolution No.4 and, thus, they intended to bind themselves to the resolutions passed by them.

31. The main stand taken by the defendants, who are the respondents in C.M.A. No.131 of 2015, has been that despite partition decrees passed earlier and memorandum of understanding entered into, still, the plaintiff went on alienating the extents covered by the very memorandum of understanding and, thus, committed breach of the terms and conditions therein and that, that conduct of the plaintiff is sufficient enough to reject the request for grant of equitable relief of interim injunction. It is also their main case that when once division was effected by way of compromise decrees passed by the Courts earlier, the relief for partition sought in the instant suit is not maintainable and the plaintiff ought to have resorted to appropriate remedy and when viewed in that perspective, the plaintiff failed to

establish *prima facie* case and even the balance of convenience does not lie in his favour much less the irreparable loss and, therefore, sought to dismiss the instant appeals.

32. Turning to the decision in **Rachakonda Venkat Rao** (Supra 3), on which reliance is placed by the learned counsel for the defendants, the Hon'ble Supreme Court has dealt with the factors to be considered in construction and interpretation of a compromise decree in a partition suit whether it is a final decree or a preliminary decree. The fact-situation therein would show that the parties entered into compromise and the compromise decree was passed on 13.07.1978. Subsequent thereto, a settlement by way of memorandum of family arrangement was entered on 05.07.1992 and earlier thereto and subsequent to the decree of 1978, there was an arrangement by way of mutual agreement between the parties in 1985. When the plaintiff filed an application under Order 26 Rules 13 and 14 read with Section 151 CPC, the District Judge, considered the subsequent family arrangement of 1985, but did not take into consideration the other family arrangement dated 05.07.1992, on the ground that it took place after the application was filed and was under consideration, and thereby, dismissed the plaintiff's application by an order dated 04.02.1993. Plaintiff challenged the said order under Section 115 CPC and the High Court treated the decree dated 13.07.1978 as a preliminary decree and entertained the application for final decree and rejected the oral arrangement of 1985 on the ground that even according to defendant No.1 therein, the arrangement of 1985 stood superseded by the family arrangement of 1992 and, did not survive according to both parties and concerning 1992 arrangement, it was also rejected on the ground that it was not signed by all the parties and it was not properly stamped nor was it registered. Finally, the High Court directed the trial court to proceed with the application and take steps for passing a final decree in the suit. While confronted with the question whether the decree dated 13.07.1978 was a final decree or it

was only a preliminary decree, the Hon'ble Supreme Court held that the compromise of 1978 was a final partition between the parties since the parties were put in possession of respective properties, which fell to their share as per the agreement reached by the parties about the partition of the properties and nothing was found in the compromise application regarding reservation of right to the parties to seek partition with respect to properties kept joint in future and that the decree as a matter of fact leaves nothing in future. Therefore, the learned counsel for the defendants would submit that in view of the compromise decrees passed by the Courts below, a suit for partition is not maintainable and, therefore, sought to dismiss the instant appeals.

33. In **Shub Karan Bubna's** case (supra 4), the Hon'ble Supreme Court held that after passing a final decree in partition suit, unless there is an agreement between the parties as to the manner of division, it is the duty of the Court to initiate that the matter is referred to Collector or a Commissioner for consequential division by metes and bounds, which would be the subject matter of the final decree and, therefore, the application for final decree in partition suit is an application in a pending suit, seeking the court to do its duty and it seeks no fresh or new relief, and consequently, it does not attract the provisions of the Limitation Act, 1963. This decision is relied on by the learned counsel for the defendants for the proposition that a fresh suit for partition is not maintainable and other remedy is available and the plaintiff has to pursue other remedy available to him pursuant to the compromise decrees passed by the Courts below.

34. We are not inclined to enter into the arena of merits and analyse the compromise decrees and their effect including the family arrangement under Ex.P-5 and its admissibility or otherwise, as we are dealing with the correctness or otherwise of the order in an interlocutory application. We are of the view that unless a full-fledged trial takes place by gathering the intention of the parties in obtaining compromise decrees and entering into the family arrangement of 2011,

no definite findings can be recorded by the Court below. Further, the Court below is required to examine the admissibility or otherwise of the family arrangement as it is unregistered in adjudicating upon the main controversy in the suit.

35. Therefore, in our considered view, the request of the plaintiff for grant of interim injunction cannot be acceded to for the reasons:

firstly, the statement of fact made by the plaintiff that all the Petition - A and B schedule properties were kept in joint appears to be not convincing, at this stage, since in the compromise decree passed in O.S. No.546 of 1982, Petition - A schedule properties are finding place in Schedule - A properties of the compromise decree along with extents in other survey numbers; even in Schedule - B of the said compromise decree, all the Petition - B schedule properties are shown with distinct extents against each of the parties herein. Therefore, the purport and effect of that compromise decree require examination, which can be done only after recording the evidence of both sides in arriving at whether the said extents are clearly demarcated or not. When viewed in that context, we have no hesitation to hold at this stage that the plaintiff is unsuccessful in making out *prima facie* case;

second, conduct of the plaintiff, as can be gathered from entering into Exs.R-1 to R-5, is worth mentioning. The main stand of the plaintiff has been that the family arrangement of 2011 was entered into, only with a view to get the lands mentioned therein surveyed and to put in possession of the extents in proportionate to their shares by clear demarcation and till the same is done, none of them shall alienate any extent. But, contrary to the said terms,

the plaintiff proceeded with alienating distinct extents to the intending purchasers under Exs.R-1 to R-5, which itself is sufficient enough to condemn his conduct, and the same disentitles him for grant of equitable relief of interim injunction. Further, whether these extents are excluded from the family arrangement of 2011 or not is yet another question that can be resolved only after the full-fledged trial.

third, the request for grant of interim injunction herein also suffers from “*suppressio vari*” since the plaintiff has not chosen to reveal alienations made earlier, which were brought out in the common counter filed by respondent Nos.2, 3 and 7, which invariably ought to have been mentioned by him, though, he could have given plausible explanation therefor at a later stage.

36. Thus, we find that even the plaintiff failed to substantiate balance of convenience in his favour, much less, irreparable loss that would occasion, in case, interim injunction is refused. This apart, the very conduct of the plaintiff in alienating the extents under Exs.R-1 to R-5, as mentioned above, also disentitles him from seeking the interim injunction.

37. Therefore, we are of the view that the order under challenge passed by the Court below refusing to grant interim injunction does not suffer from any legal infirmity warranting interference.

38. Therefore, both the Civil Miscellaneous Appeals are dismissed confirming the order impugned. Since the suit relates to the year 2013, the Court below is directed to dispose of the suit itself as expeditiously as possible. There shall be no order as to costs.

39. As a sequel thereto, Miscellaneous Petitions, if any, pending

in these miscellaneous appeals, stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 29th, 2015.

SIVA/PV

[\[1\]](#) (2003) 1 MLJ 369
[\[2\]](#) 2006 (5) ALD 1 (SC)
[\[3\]](#) (2003) 7 SCC 452
[\[4\]](#) (2009) 9 SCC 689