

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Miscellaneous Appeal No.390 of 2015

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JUDGMENT:

This appeal by the unsuccessful defendants under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('the Code', for brevity) is directed against the order dated 31.03.2015 of the learned XV Additional District Judge, Nuzvid of Krishna District passed in I.A.No.473 of 2014 in O.S.No.94 of 2014 filed under Order XXXIX Rules 1 and 2 read with section 151 of the Code for grant of a temporary injunction restraining the defendants from alienating the plaint schedule properties pending final disposal of the suit for partition.

2. I have heard the submissions of the learned counsel for the defendants/appellants ('the defendants', for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record. I have also perused C.M.A.M.P.No.1051 of 2015 filed under Section 151 of the Code by the defendants to receive on file the copy of the Will dated 11.06.1995 and also C.M.A.M.P.No.899 of 2015 filed under Section 151 of the Code by the defendants to receive additional material papers including the sale deed dated 02.11.1995 and a receipt dated 02.11.1995.

3. The facts leading to the filing of the present appeal, in brief, are as follows: The plaintiffs having brought a suit for partition against the defendants had also filed the aforementioned interlocutory application and sought a temporary injunction to restrain the defendants from alienating the plaint schedule property pending final disposal of the suit for partition. While allowing the said interlocutory application on merits, the Court below had made absolute the interim injunction granted on 25.09.2014 and had thus restrained the defendants from alienating the plaint

schedule properties pending final disposal of the suit. Aggrieved of the said orders, the defendants are before this Court.

4. The case of the plaintiffs, in brief, is this: 'The plaintiffs 2 to 5 are the children of the 1st plaintiff. The plaintiffs 6 and 7 are the younger sisters of the wife of the 1st plaintiff. They all had filed the suit for granting a preliminary decree for partition of the plaint schedule properties into six equal and equitable shares by metes and bounds and according to good and bad qualities and allotment of three such separated shares to the plaintiffs. The wife of the 1st plaintiff by name Jhansi Lakshmi and the plaintiffs 6 and 7 are sisters. The said three sisters and the defendants are the children of one Pakki Umamaheswara Rao. All of them constituted a Hindu undivided joint family, which owned and possessed certain properties, which are the plaint schedule properties. The deceased wife of the 1st plaintiff and the plaintiffs 6 and 7 are entitled to a 1/6th share each in the plaint schedule properties. On the death of the wife of the 1st plaintiff, he and his children, i.e., plaintiffs 1 to 5 have together become entitled to her share, i.e., 1/6th share in the plaint schedule properties. When the plaintiffs had asked the defendants to cooperate with them and affect partition of the plaint schedule properties, the defendants have postponed the issue from time to time on one pretext or the other. Then, the plaintiffs had got issued a notice on 08.09.2014 seeking partition. The defendants had refused to receive the said notice. In the circumstances, the plaintiffs are constrained to bring the suit for partition. Having come to know that the defendants are making attempts to alienate the plaint schedule properties, the plaintiffs had also sought a temporary injunction to restrain them from alienating the plaint schedule properties. The plaintiffs have got a *prima facie* case and the balance of convenience is also in their favour. If the injunction as prayed for is not granted and any alienations of the properties are made, the same would lead to multiplicity of proceedings and the plaintiffs would suffer serious and irreparable loss.'

5. On the other hand, the case of the defendants, in brief, is this: 'Since the times of the marriages of the three sisters, namely, the wife of the 1st plaintiff and the plaintiffs 6 and 7, there is no joint family consisting of the said sisters and the defendants along with their father. The marriage of the wife of the 1st plaintiff had taken place in

February 1975 and since then she had lived with her family till her death. The marriage of the 6th plaintiff had taken place in May 1983 and since then she has been living with her family. The marriage of the 7th plaintiff was also performed subsequently and since then, she has been living with her family. Since the said three daughters of Umamaheswara Rao are married, they are not members of the joint family since the dates of their respective marriages. The father never owned the extent of land as mentioned in item no.1 of the schedule of the plaint. By the time of the demise of the father, the joint family of the defendants is having only Ac.1.04 cents in R.S.No.549/2 of Veluru village and a terraced house in R.S.No.294 of the same village. From the said land, Ac.0.30 cents of land was sold with the consent of the 7th plaintiff at the time of her marriage that too at her instance. The sale proceeds from the said transaction were presented to her and she had deposited the same in a PACCS at Veluru. Since the date of her marriage, the joint family consisted of the defendants only. The defendants are in possession and enjoyment of Ac.0.74 cents and the house covered by item no.4 of the schedule of the plaint till the partition of the property under registered partition deed dated 25.04.2013. Therefore, the question of partition of the properties in item nos.1, 2 and 4 of the plaint schedule does not arise. As such the plaintiffs' claim is imaginary. Item no.3 of the properties mentioned in the plaint schedule is the property of Annapurnamma, the mother of the defendants. She had got Ac.1.00 cents of land from her brothers under a registered gift deed dated 19.05.1955. She had purchased Ac.0.50 cents of land under a registered sale deed dated 19.07.1963 and another extent of Ac.0.50 cents under a registered sale deed dated 22.12.1968. The total extent as per records was Ac.2.08 cents in R.S.No.549/2A of Veluru village and for the said extent she is declared as pattadar. She had enjoyed the said property during her life time. She, during her last days, had executed a Will dated 15.06.1995 in a sound and disposing state of mind and had conveyed an extent of Ac.0.50 cents of land to the 7th plaintiff and the remaining extent of Ac.1.58 cents of land to the defendants subject to payment of Rs.10,000/- to the 6th plaintiff and meeting the marriage expenses of the 7th plaintiff. In the Will the 1st defendant was directed to sell Ac.0.58 cents of land and perform the marriage of the 7th plaintiff, in case of failure to meet the marriage expenses of the 7th plaintiff by the defendants equally and jointly. Further, the defendants were also directed to discharge the debt of Rs.6,000/- standing in her name in the Society.

By that time, the wife of the 1st plaintiff, who is one of the daughters of Annapurnamma, was not alive. She had predeceased her father and mother. Subsequently, Annapurnamma had also passed away. As per the terms of the Will, the defendants had performed the marriage of the 7th plaintiff by meeting the expenditure jointly and had also paid Rs.10,000/- to the 6th plaintiff under receipt dated 02.11.1995 in the presence of her husband, Ganala Siva Prasada Rao and D.Gopalam. After the death of the mother of the defendants, the defendants and the 7th plaintiff have separated their respective shares of lands on a demand made by the 7th plaintiff. Thereafter, the 7th plaintiff had sold away Ac.0.50 cents of land under registered sale deed to D.Gopalam, which she had got under the Will dated 15.06.1995 of the mother. The defendants have got Ac.1.58 cents of land from their mother by virtue of the bequests under her Will and have been in possession and enjoyment of the said land. Out of the said land Ac.0.30 cents of land was sold for their personal family necessities and the remaining extent of Ac.1.28 cents of land was partitioned under a registered partition deed dated 25.04.2013 and the said land is covered by item no.3 of the schedule of the plaint. Item no.4 of the plaint schedule property was also partitioned and the defendants are enjoying their respective shares with full rights, title and possession of the respective shares of properties. The plaintiffs are having knowledge of the same. In the first week of September 2014, the defendants, to meet their family necessities, have jointly sold their respective extents of shares, i.e., a total extent of Ac.3.06 cents in R.S.No.549/2 of Veluru village to G.Srinivasa Rao under an agreement of sale. Under the said agreement, the defendants had agreed to execute a registered sale deed at his expenses before the end of January 2015. By knowing the said facts only, the plaintiffs had brought the suit without an iota or semblance of right and only to make a wrongful gain. Hence, the petition may be dismissed.'

6. Both the learned counsel had advanced arguments in line with the pleadings of the respective parties. The learned counsel for the defendants would contend as follows: "Though the documents were filed and exhibited, the court below has not adverted to either the pleadings or the documents but, had passed the orders granting temporary injunction in a routine and casual manner without considering the facts peculiar to the case. The order impugned, which is passed without considering whether the properties are available for partition or not is unsustainable

and is therefore, liable to be set aside. The defendants had filed before this Court three material documents, namely, the Will deed of the mother, a sale deed and also a receipt passed by one of the plaintiffs for Rs.10,000/- under which the said amount was paid as per the recital in the Will of the mother. All the said documents also support of the case of the defendants.” On the other hand, the learned counsel for the plaintiffs would contend as follows: “It is admitted that the properties are of late Umamaheswara Rao and late Annapurnamma, who are the parents of the three daughters (namely, the wife of the 1st plaintiff and the plaintiffs 6 and 7) and the Sons, i.e., the defendants. Hence, after the intestate deaths of the parents, the sons and the daughters have become entitled to equal shares in all the properties. The alleged Will deed and the other documents are produced for the first time before this court. The same cannot be looked into as the same are not filed with a petition to receive additional evidence by following the procedure established by law. *Prima facie* the plaintiffs 1 to 5 together being the successors-in-interest of a deceased daughter and the plaintiffs 6 and 7, who are also the daughters, are entitled to a 1/6th share each. At this stage, this court cannot go into complex issues and decide as to whether the properties are available for partition or not and whether or not the Will deed relied upon by the defendants is true. *Prima facie*, the alienations made ignoring the rights of the legal heirs of the deceased daughter and the surviving daughters i.e., the plaintiffs herein are not valid and are not binding on the plaintiffs. Any alienations going to be made during the pendency of this suit for partition by ignoring the rights of the plaintiffs would lead to complex situations and multiplicity of proceedings and if the injunction orders are vacated, the defendants are sure to execute a sale deed as an agreement of sale was already executed and, therefore, to preserve the *status quo* during the pendency of the suit, the trial Court had rightly granted a temporary injunction not to alienate the properties. The defendants had admittedly executed an agreement of sale in respect of Ac.03.06 cents of land in R.S.No.545/2 and had also undertaken to execute a sale deed in favour of the vendee there under by January 2015 and the said very conduct of the defendants would show that they are bent upon alienating the property and creating the third party interest to delay and defeat the just claim of the plaintiffs. The appeal is devoid of merit.”

7. I have carefully gone through the pleadings and the material record. I have given earnest consideration to the facts. I have noted the submissions. A perusal of the impugned order would show that no details of the exhibited documents are furnished in the appendix of evidence at the foot of the order. However, a perusal of the impugned order would show that exhibits P1 to P5 and R1 to R9 were marked. There is not even a reference in the orders to the details of these documents which are exhibited. Nevertheless, the court below had noted from the contentions of the defendants as well as the plaintiffs and found that there is a likelihood of alienation of properties and, hence, the court below had considered it appropriate to direct the defendants not to alienate the schedule properties till the disposal of the suit and had, therefore, granted a temporary injunction in favour of the plaintiffs in order to preserve the *status quo* in regard to the existing properties.

8. Be that as it may. When an Interlocutory Application is filed for a temporary injunction in regard to immovable properties, 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 pleadings of the parties find support from the recitals in the respective documents. The trial court did not make even a passing reference as to what are the documents exhibited. Hence, the learned counsel for the defendants/appellants prayed for setting aside the order and allowing the appeal. However, he would further submit that the defendants intend to rely upon the further documents now filed before this court to substantiate their defence. But, simply the documents viz., Will, sale deed and receipt are filed with two miscellaneous petitions with request to receive them as additional material papers. Nonetheless, no specific request is made to receive the said documents as additional evidence. Alternately, the learned counsel for the defendants would submit that a re-hearing and disposal of the interlocutory application afresh by the trial court is necessary, in the facts and circumstances of the case. He prayed for allowing the appeal and setting aside the impugned order. Per contra, the learned counsel for the plaintiffs would submit that if the appeal is allowed and the impugned order is set aside and the matter is remitted to the trial court for fresh hearing, the fresh hearing and disposal of the interlocutory application would take some time and that if the property is alienated in the meanwhile the plaintiffs would suffer serious loss. Therefore, he had submitted that in case the matter is remitted to the trial court, the interim order not to alienate the properties which was granted earlier by the trial court and which was made absolute

while allowing the application by the trial court be ordered to be maintained till the fresh disposal of the interlocutory application by the trial court.

9. Having given a detailed and thoughtful consideration, this court is of the well considered view that the interlocutory application requires a rehearing and fresh disposal by the trial court.

10. For the reasons assigned, the Civil Miscellaneous Appeal is allowed and the order and the decretal order in I.A.No.473 of 2014 of the trial Court 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 further documents and then dispose of the said application afresh, on merits and in accordance with the procedure established by law. As it is an admitted fact that *ad interim* injunction granted on 25.09.2014 in favour of the plaintiffs was in force till it was made absolute; and, the continuation of the said order is necessary to meet the ends of justice; hence, there shall be interim injunction not to alienate the plaint schedule properties until the disposal of the interlocutory application afresh and on merits by the court below. The trial Court is directed to dispose of the aforementioned IA as directed supra, as expeditiously as possible and preferably within one month from the date of the receipt of a copy of this order. In view of the fact that the parties are closely related the trial court may dispose of the suit itself as expeditiously as possible subject to cooperation by both the sides.

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

M. SEETHARAMA MURTI, J

23rd July 2015

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