

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.729 of 2014

JUDGMENT:

This appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 ('the Code', for short) by the unsuccessful plaintiff/petitioner is directed against the order dated 10.06.2014 of the learned Principal District Judge, Warangal passed in I.A.No.367 of 2013 in O.S.No.40 of 2013 filed under Order XXXIX Rules 1 and 2 read with Section 94(a) of the Code requesting to grant a temporary injunction restraining the respondent/defendant from alienating or mortgaging the suit schedule land or otherwise creating any third party interest over it, pending final disposal of the suit.

2. I have heard the submissions of the learned counsel for the appellant/ plaintiff ('the plaintiff, for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The basic facts necessary for consideration in this appeal, in brief, are as follows:

The sole plaintiff had brought the suit against the sole defendant for a declaration that the plaintiff is the absolute owner and for a perpetual injunction in respect of Ac.5.38 guntas of agricultural dry land in Sy.No.402/B of Ashwaraopally village, Raghunathpally Revenue Mandal, Warangal District, more fully described in the schedule annexed to the plaint. Along with the suit, the plaintiff had also filed the aforementioned interlocutory application for grant of a temporary injunction against the defendant restraining the defendant from alienating or mortgaging the suit schedule land or otherwise creating any third party interest over it, pending final disposal of the suit. The said application was resisted by the defendant. At enquiry, exhibits A1 to A15 and B1 to B26 were marked. But, no oral evidence was

adduced. On merits, the trial Court had dismissed the application of the plaintiff. Therefore, the plaintiff had preferred this appeal.

4. The learned counsel for the plaintiff would contend as follows:

The suit was filed for declaration of title and perpetual injunction; and, an injunction not to alienate or encumber the property was only sought to preserve the *status quo* during the pendency of the suit and that the object of filing that petition is to see that no third party interests are created in respect of the suit schedule land during the pendency of the suit as any such third party interests that may be created over the property by either alienating or mortgaging the same or otherwise dealing with the property would lead to complex situations and multiplicity of proceedings. But the trial Court had dismissed the petition simply observing that the doctrine of *lis pendens* enshrined in Section 52 of the Transfer of Property Act would protect the interests of the plaintiff, without taking note of the fact that if the property is either encumbered or transferred in any manner and changes hands during the pendency of the suit, several complexities would arise resulting in either delaying or defeating the decree that may ultimately be passed in favour of the plaintiff. The plaintiff had made out a *prima facie* case by producing the documents under exhibit 'A' series. When the plaintiff had made an application for correction of the revenue entries in the revenue records and when the same was not considered, the plaintiff was constrained to file a writ petition before this Court in W.P.No.35046 of 2012; and, this Court while disposing of the said writ petition had directed the plaintiff to file an appeal before the appellate authority, i.e., the R.D.O concerned and that an appeal in Appeal No.394 of 2013 that was accordingly filed by the plaintiff is also pending for consideration before the said revenue authority and that the plaintiff had purchased the property from the husband of the defendant herein and that after the death of her husband, the defendant has been disputing the alienation made by her husband with ulterior motive. The defendant had already executed an agreement to sell in favour of a third party and the said document is exhibited as exhibit B25 and therefore, the said fact would show that the contention of the plaintiff that the defendant is bent upon alienating

the property to delay and defeat the just claim of the plaintiff is true. Therefore, in the facts and circumstances of the case, the balance of convenience is also in favour of the plaintiff and if no injunction is granted and if third party interest is created leading to multiplicity of proceedings and complexities, the plaintiff would suffer irreparable loss which cannot be compensated in terms of money.

5. Per contra, the learned counsel for the defendant while supporting the order of the Court below had contended as follows:

The plaintiff is a stranger to the suit land and that the defendant is the absolute owner and possessor of the same. She is having right, title, interest, possession and enjoyment over the suit land over which the plaintiff has no manner of right. There is no need for the defendant to interfere with the plaintiff's alleged possession and enjoyment of the suit land taking advantage of any alleged wrong entries in the revenue records as she is the owner in actual possession and enjoyment of the property. The suit land admittedly belonged to the husband of the defendant. Unfortunately, her son had died in a railway accident in April 2005 and on account of her son's untimely death, her husband had suffered mental shock and fell ill and had later died in September 2005. She being the sole legal heir of her husband had acquired right, title and interest over the subject property. Her husband did not alienate the property and had not executed any document in favour of the plaintiff. The documents being relied upon by the plaintiff are fabricated. The entries in revenue records support the defence of the defendant in all respects. Under the alleged document, no valid title passed to the plaintiff. The plaintiff has no case much less *prima facie* case. The balance of convenience lies in favour of the defendant who is a woman without any male support since her son and husband had both died unfortunately. The trial Court had rightly dismissed the petition of the plaintiff.

6. Now the points for determination are –

1. **“Whether the plaintiff had made out valid and sufficient grounds and had satisfied the cardinal principles**

for granting a temporary injunction restraining the defendant from alienating or mortgaging the plaint schedule land or otherwise creating any third party over it? Whether the impugned order is unsustainable under facts and law as contended by the plaintiff?

2. To what relief?"

7. POINTS:

7.1 The facts leading to the filing of the present appeal and the contentions of both the sides are already stated supra, in detail. I have noted the submissions of the learned counsel for both the sides.

7.2 The case of the plaintiff is this:

He had purchased the suit land under an unregistered sale deed in the year 1989 from the husband of the defendant and was put in possession of the said land. Ac.0.05 ½ guntas of land was mutated in the name of Kathula Ramadevi. An extent of Ac.5.32 ½ guntas in Sy.No.402/B1 was recorded in the name of the plaintiff in the revenue records. The sale transaction under the unregistered sale deed was regularised as per the A.P. Rights in Lands and Pattadar Pass Books Act and Rules framed thereunder. The then M.R.O Raghunathapally, after due enquiry had issued on 15.12.1997, a regularization certificate in Form-13 B under R.O.R rules. The Pattadar pass book and the title deed book were also issued to the plaintiff in respect of the suit land. The plaintiff is in actual possession and enjoyment of the suit land in his own right and got the land levelled by investing huge amounts. He had first instituted the suit O.S.No.202 of 2005 on the file of the Junior Civil Judge, Jangaon. In that suit, an *ex parte* injunction was granted. Later, that suit was transferred to the Court of the learned Senior Civil Judge, Jangaon and was re-numbered as O.S.No.132 of 2009. The defendant in the said suit did not later interfere with the possession of the plaintiff. Therefore, the plaintiff did not prosecute the above suit and the said suit was dismissed for default in August 2010. In spite of the regularization of the sale deed issuance of the pattadar passbook and the title deed book in favour of the plaintiff, the officers

of the Revenue Department did not properly maintain the revenue records and the land wrongly continued to be in the name of his vendor as pattadar and possessor. Even though the vendor is not alive, his name was continued in the revenue records as pattadar and possessor of the suit land. Later, during the years 2010-2011 and 2011-2012 the name of the defendant was recorded as the pattadar and possessor without any notice to the plaintiff. The said entries are incorrect. In spite of a representation by the plaintiff, the Tahsildar, Raghunathapally did not attend to the representation and therefore, W.P.No.35046 of 2012 was instituted before this Court for correction of the entries in the revenue records. As directed in the writ orders, an appeal was filed before the R.D.O, Jangaon as per the provisions under the A.P. Rights in Lands and Pattadar Pass Books Act. Taking advantage of the wrong entries in the revenue records, when the defendant had attempted to alienate the suit land and had tried to create third party interest over it, to the detriment to the right, title and interest of the plaintiff over the suit land, the suit was brought.

7.3 The trial Court had granted initially an *ex parte* injunction on 13.03.2013 in favour of the plaintiff.

7.4 The defendant had filed a counter resisting the application of the plaintiff and claiming right, title and interest in the property in the suit land as well as possession. She had asserted in her counter affidavit that her husband is admittedly the owner of the property and that on his death, the schedule property devolved upon her and that the plaintiff is a stranger to the suit property. She had further contended as follows: "The plaintiff no right, title, and interest and possession over the schedule property. The land was mutated in her name as the pattadar and possessor in the year 2005 itself. Since then, she was and is in continuous exclusive possession and enjoyment of the schedule property as absolute owner and possessor. Her husband had neither sold the suit land nor executed any document like the simple sale deed in favour of the plaintiff. The documents of the plaintiff are fabricated and not true."

7.5 I have gone through the contents of the exhibits. Exhibits A1 and A2 are the Form 13 (b) and (c) issued by the M.R.O., Raghunathapally. Exhibit A3 and A4 are the title deed and the pattadar pass books. Exhibits A5 to A11 are the certified copies of pahanies. Ex.B3 is the application given by the defendant to the M.R.O., Raghunathapally. Exhibit B4 is the endorsement dated 15.07.2013. Exhibit B5 is the memo dated 23.04.2013 issued by Tahsildar, Raghunathapally. Exhibit B6 is the Form 1-B. Exhibit B7 is the certified copy of the pahani. Exhibit B8 is the mutation entry in favour of respondent. Exhibits B9 to B23 are the certified copies of pahanies. Exhibit B24 is the copy of a pahani. Exhibit B25 is the agreement for sale dated 28.12.2012. Exhibit B26 is the certified copy of the sale deed dated 22.06.1988.

7.6 The plaintiff had brought the suit for declaration of his title and for a perpetual injunction. His claim is based upon an unregistered simple sale deed executed by the husband of the defendant in respect of the suit land which was subsequently regularised by the revenue authorities. He had also exhibited pattadar pass book and the title deed book in respect of the suit land. However, the defendant had denied the execution of any sale deed by her husband and had further stated that her husband never sold and delivered possession of the property to the plaintiff and had contended that exhibits A1 and A2 are created documents. Exhibit B6 is the extract of Form 1-B dated 19.04.2013 and it discloses that the defendant is the pattadar in respect of the suit land. She had also produced exhibits B4 and B5 endorsements issued by Tahasildar, Raghunathapally in July 2013 and April 2013 respectively in support of her contentions. Even the earlier suit that was brought by the plaintiff is not against the present defendant and it was brought against one Mekala Mohan Reddy and another Manda Pochaiah and that suit was ultimately dismissed for default. Even the plaintiff admits that the property was not mutated in his name and that the name of the husband of the defendant continued to be mentioned as possessor in the revenue records for some time and that later, the name of the defendant was entered in the revenue records. In this interlocutory application, there is no need to go

into the contentious issues and record any findings that will have a bearing on the issues involved in the main suit. At this stage, this Court need not go into the issue of khas/actual possession over the suit land as the injunction is only being sought to restrain the defendant from alienating or encumbering the property in any manner pending disposal of the suit. What is important to note is that under exhibit B25, the agreement to sell dated 28.12.2012, the defendant had agreed to sell the suit land in favour of a third party, Bojja Sanjay Sena, a resident of Subedari, Hanamkonda of Warangal District for a consideration of Rs.11,00,000/- per acre. She had already received an advance of Rs.5,00,000/- under the said agreement to sell. The said agreement was executed prior to the institution of the present suit. Therefore, the apprehension of the plaintiff is that the defendant is likely to execute a sale deed in favour of the vendee under the said sale agreement or his nominee. The object of the Rule under Section 52 of the Transfer of Property Act is to secure the property till litigation is over. If one of the parties deals with it, the decision of the Court will be binding on such transferees deriving title from a party to the proceeding by an alienation made *pendente lite*.

Under the provision of law, the transfer is valid, but cannot affect the rights of a party arising out of the result of the suit or proceeding.

7.7 The learned counsel for the plaintiff would submit that since the agreement is prior in point of time to the suit and as the present *lis* has commenced after the said agreement to sell, there may be contentions, whether valid or not, by the vendee under the agreement that the alienation in his favour is not affected by the Rule enshrined in the doctrine of *lis pendense* and therefore, there is complexity in the matter and that if no injunction is granted and a sale deed is executed in favour of the vendee under exhibit B25 and if he further alienates the property or makes improvements over the property and claims equities or other reliefs which the law may permit, the plaintiff would be put to serious loss and may not be able to realise the fruits of the decree that may ultimately be passed in his favour in the suit on account of the complexities that may arise in the matter. The defendant did not disclose in her counter affidavit about the above said

agreement to sell executed by her in favour of third party. She also did not indicate in her counter affidavit that she is not going to either execute a registered sale deed in favour of her vendee or otherwise alienate the property. As rightly contended, if the property is alienated pursuant to the agreement of sale under exhibit B25 in favour of Bojja Sanjay Sena or his nominee and if further alienations are made by such purchaser or if the property is developed and equities are claimed by him or any third party, such situations would lead to complexities and multiplicity of proceedings. The very fact that there is already an agreement to sell under exhibit B25 executed by the defendant in favour of a third party in respect of the suit schedule land, in the facts and circumstances of the case, clinches the issue in favour of the plaintiff. The trial Court had unnecessarily went into extraneous issues like the rights of the parties and the possession over the suit land, which are not germane and had erroneously held that the plaintiff is not entitled to the injunction in the present form. The law is well settled that temporary injunctions are generally granted not to alter the *status quo* but to maintain the *status quo* during the pendency of the suit. Viewed thus, this Court finds that the plaintiff has got a *prima facie* case and the balance of convenience in his favour.

8. In the result, the Civil Miscellaneous Appeal is allowed and the order dated 10.06.2014 passed in I.A.No.367 of 2013 in O.S.No.40 of 2013 by the learned Principal District Judge, Warangal is set aside and said petition is allowed granting a temporary injunction restraining the respondent/defendant from alienating or mortgaging the suit schedule land or otherwise creating any third party interest over it, pending final disposal of the suit. There shall be no order as to costs. Considering the peculiar nature of the matter, this Court deems it just and fair to direct the Court below to decide the suit on merits, as expeditiously as possible, preferably within three months from the date of receipt a copy of this judgment.

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

27th August, 2015
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M. SEETHARAMA MURTI, J