

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2992 of 2015

ORDER:

Heard Sri C.A.R.Seshagiri Rao, learned counsel for the petitioner and Sri M.V.Suresh, learned counsel, appearing for Sri D.Hanumantha Rao, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.05-06-2015 in C.M.A.No.87 of 2012 of the Principal District Judge, Warangal reversing the order dt.03-08-2012 in I.A.No.1620 of 2011 of the II Additional Junior Civil Judge, Warangal.
3. The petitioner herein is the defendant in the above suit. The respondent herein filed the said suit against the petitioner for perpetual injunction restraining the petitioner from interfering with his alleged peaceful possession and enjoyment of the suit schedule property. The suit schedule property is described as a house and open place bearing Municipal Door No.3-1-220 to an extent of 650 sq. yds situated at Kakatiya Colony, Hanamkonda within specified boundaries.
4. In the plaint, the respondent/plaintiff alleged that he is the absolute owner and possessor of the suit schedule property and it was acquired by him under a registered gift settlement deed dt.19-03-2009 executed by his mother Saramma. He claimed that possession of the property had been delivered to him and he is in enjoyment thereof. He contended that the house in the suit schedule property became dilapidated and he intended to make new construction and so he dismantled the same and made new construction with a compound wall in it. He alleged that the petitioner, who is a stranger, had an intention to grab it

on account of its value and attempted to dismantle the compound wall erected by the respondent on 03-12-2011, 05-12-2011 and 06-12-2011. He relied upon mutation proceedings issued in his favour by the Warangal Municipal Corporation, Warangal and other documents in support of his plea that he is the owner as well as person in possession and contended that he is entitled to an injunction in the suit.

5. He also filed I.A.No.1620 of 2011 under Order 39 Rule 1 and 2 CPC seeking a temporary injunction against the petitioner restraining the petitioner from interfering with his alleged peaceful possession and enjoyment of the suit schedule property pending the suit.
6. Counter affidavit was filed by the petitioner opposing the grant of temporary injunction to the respondent and contending that the respondent played fraud and with created record, he is trying to get an order of injunction by suppressing material facts. The title as well as possession of the respondent were denied. It was pointed out that assessment or allotment of a house number by the Municipal Corporation does not in any way amount to evidence of right, title or possession of a property and the settlement deed pleaded by the respondent contains an interpolation that the property is an ancestral property of the donor and this indicates the fraud committed by the respondent. It was pointed that the respondent and his donor deliberately omitted to record the survey number in the gift settlement deed dt.19-03-2009 allegedly executed by the respondent's mother in his favour and in fact, the suit schedule property falls in Sy. No.46. According to the petitioners, his father P.Narasimha Reddy, had purchased Ac.0.31 gts in Sy. No.46, Ac.0.19 gts in

Sy. No.49 and Ac.0.39 gts in Sy. No.50 of Hanamkonda village under registered sale deed dt.20-09-1967 from his vendor Harischandra Agarwal and on the death of his father, he inherited the above land in Sy. No.46. He claimed that he had sold some of the land to third parties under registered sale deeds and he was in possession of 1400 sq. yds. He contended that both in the gift settlement deed as well as in the plaint schedule, it has been shown that he had land to the North of the suit schedule property, but the suit schedule property itself belongs to the petitioner. He claimed that he had raised a compound wall in 871 sq yds. in Sy. No.46 and that he had raised a small room in it and enjoying of the same.

7. A rejoinder was filed to the counter by the respondent stating that his father's father under a simple sale deed dt. 04-08-1970, purchased Ac.0.07 gts of land in Sy. No.43, that he had constructed a small room in the said property and after the death of the respondent's grand father, the respondent's mother succeeded to the property. It was also pleaded that the respondent's mother took financial aid from the AP Housing Finance Corporation under Indiramma Housing Scheme and raised a small room in the suit schedule property, and that she also obtained electricity connection to the suit schedule property. It was denied that the suit schedule property was in Sy. No.46.
8. Before the trial Court, the respondent marked Exs.P-1 to P-17 while the petitioner marked Exs.R-1 to R-4.
9. By order dt.03-08-2012, the trial Court dismissed the application for interim injunction and vacated ad interim injunction granted by it on 09-12-2011. It held that the sale deed

Ex.P-1

dt.04-08-1970 had not been originally pleaded by the respondent but the same was introduced by way of reply affidavit; that it is a new story; and if at all the respondent's grand father had purchased Ac.0.07 gts in 1970, the same should have been filed before the revenue authorities and got regularized by him. It held that nondisclosure of Ex.P-1 at any point of time from 1970 onwards till date raises suspicion in the mind of the Court as to its genuineness. It also held that the respondent did not file any document to support Ex.P-1 and to prove his grand father's possession of the property It also observed that Ex.P-1 was not referred to Ex.P-13 gift settlement deed being relied upon by the respondent and that the said document recites that she got the property from her ancestors. It held that the respondent's mother, being the daughter-in-law of the respondent's grand father, is not a Class-I heir and she could not have inherited it and therefore, Ex.P-1 dt.04-08-1970 and Ex.P-13 gift settlement deed dt.19-03-2009 do not convey any title or possession to the respondent over the suit schedule property. It also observed that mutation of municipal records does not confer right and title of the possession over the suit schedule property. It rejected the contention of the respondent that his mother constructed the suit schedule property stating that no material is filed to show to prove this fact or that the construction made by the respondent's mother was given the Door No.3-1-220 and no construction permission has been filed. It referred to Ex.P-12, proceedings of the AP Housing Corporation, wherein the Government sanctioned loan of Rs.40,000/- to the respondent's mother in November 2007

permitting her to construct a house and observed that in the said document, house No.3-1-220, Kakitiya Colony, appears to have been incorporated by some unknown person with the aid of pen and other particulars of Ex.P-12 are computer written.

10. Challenging the same, the respondent filed C.M.A.No.87 of 2012 before the Principal District Judge, Warangal.

11. By order dt.05-06-2015, the said appeal was allowed and a temporary injunction granted in favour of the respondent. The lower appellate Court held that Ex.P-1, which is an unregistered document, can be looked for a collateral purpose to prove the possession of the property. It held that Sy. No.46, in which the petitioner claims to have land, is to the North of the land purchased under Ex.P-1 and merely because Ex.P-1 was produced by respondent along with a reply affidavit, its authenticity cannot be doubted since it is a 30 years' old document. It referred to Ex.P-12 proceeding issued by the AP Housing Corporation and stated that it indicated that the mother of the respondent was sanctioned a house in the Indiramma Housing Scheme, that the reason assigned by the trial Court for not believing it, is not correct, and the location of the house bearing such door No.3-1-220, Kakitiya colony is itself established. It even placed reliance on a photograph, filed in the trial Court but not marked by the trial Court, as proof of existence of a shed in the suit schedule property and accepted the case of the respondent that there was previously an old house which he demolished to construct a new shed apart from a compound wall. It observed that the question whether the mother of the respondent could be held to have succeeded to the property of the grand father of the respondent, would be considered in the

trial since it was only considering the possession of the property. It criticized the petitioner for not producing the any material in support of his plea that he made the construction of the compound wall in the subject property since he did not produce the municipal permission for making construction of the compound wall. It rejected Ex.R-1 sale deed dt.20-09-1967, filed by petitioner, on the ground that under the said document, no land in Sy. No.43 was purchased by the petitioner's father.

12. Challenging the same, this Revision Petition is filed.

13. Learned counsel for the petitioner contended that the trial Court had given cogent reasons for refusing to grant temporary injunction in favour of the respondent but the lower appellate Court on the basis of conjunctures and surmises, perversely set aside the order of the trial Court and granted a temporary injunction in favour of the respondent. He adopted the reasoning of the trial Court and contended that the question whether the house in dispute is in Sy. No.43 or Sy. No.46 should have been first got ascertained by the respondent and without such ascertainment, on the basis of an unregistered Ex.P-1 dt.04-08-1970, he cannot be granted any relief, particularly, when the mother of the respondent cannot be said to be class-I heir to the respondent's grand father and the recital in Ex.P-13, did not mention about Ex.P-1. He contended that when the very title of the respondent is highly doubtful and since the respondent had not based his claim for injunction solely on the basis of his possession but also on his title, the lower appellate Court, without *prima facie* deciding the title of the respondent, could not have granted an injunction in his favour. He contended that the

entire approach of the lower appellate Court is perverse and instead of placing burden on the respondent to prove his case, the entire burden was placed on the petitioner.

14. Learned counsel for the respondent/plaintiff on the other supported the order passed by the lower appellate Court. He contended that the question of title is not relevant since the suit is filed for injunction and at best only *prima facie* title can be gone into, that too only in the suit, and since the exhibits filed by the respondent *prima facie* prove the title and possession of the respondent over the suit schedule property, there is no necessity to interfere with the findings of the lower appellate Court. He contended that the municipal tax demand notices starting from the year 2003 as well as electricity payment receipts filed by the respondent (Exs.P-3 to P-10) categorically establish the possession of the respondent. He further contended that under Ex.P-12 dt.14-12-2007 although certain loan was sanctioned in favour of the mother of the respondent, no construction subsequent thereto was resorted to by the respondent or his mother and the said document was relied upon only to show that in respect of the suit schedule property bearing door No.3-1-220 only, the loan was sanctioned. He contended that the petitioner ought to establish that the suit schedule property is in Sy. No.46 and till then, the injunction granted in favour of the respondent by the lower appellate Court should be maintained. He also stated that his client is prepared to give an undertaking that he will not claim any equities, in case, any constructions are made by his client pending the suit.

15. I have noted the submissions of both sides.
16. In the present case, the relief of injunction has been sought by the respondent/plaintiff not only on the basis of his possession but on the basis of his title of the property.
17. In the gift settlement deed Ex.P-13 dt.19-03-2009 executed by his mother in his favour no doubt the suit schedule property is mentioned But the source of title of his mother is mentioned as ancestral property. By way of rejoinder however, Ex.P-1, unregistered sale deed, dt.04-08-1970, in the name of the respondent's grand father, has been introduced which mentions that the land in Sy. No.43 has been purchased by the grand father of the respondent. Respondent contends that in that property, the respondent's mother had made certain constructions originally; and since those structures had become dilapidated, they were dismantled by the respondent and new constructions and compound wall were made by him.
18. The petitioner has disputed this contention and alleged that the suit schedule property is not in Sy. No.43 but in Sy. No.46 and that he was the person who made construction of the compound wall in the suit schedule property.
19. Therefore, one of the points to be considered in the suit as well as in the I.A. for temporary injunction is "whether the suit schedule property is located in Sy. No.43 as alleged by the respondent or in Sy. No.46 as alleged by the petitioner." No steps in this regard have been taken by the respondent. This aspect of the matter has totally missed the attention of the lower appellate Court.

20. Also since the respondent is claiming injunction on the basis of his title as well as possession, it is the duty of the respondent to *prima facie* establish both his title and possession. Ex.P-1 is an unregistered sale deed in favour of the respondent's grand father in respect of the land in Sy. No.43.
21. It is settled law that no title passes under unregistered sale deed. The respondent's mother is the daughter-in-law of the respondent's grand father. She is not a Class-I heir and *prima facie* it is doubtful if she can inherit any property from her father-in-law under the provisions of the Hindu Succession Act, 1956.
22. In Ex.P-13 gift settlement deed, there is no reference to Ex.P-1 and in fact it states that the property gifted under the said document is the ancestral property of the donor.
23. These factors throw considerable doubt on the title claimed by the respondent, and the lower appellate Court, in my considered opinion, was not correct in deflecting this issue stating that it will be considered in the trial and for the purpose of considering the temporary injunction application, possession alone needs to be considered.
24. Also coming to Ex.P-12 dt.14-12-2007, the said document purports to be a document granting loan for the purpose of construction of a house in favour of the mother of the respondent and it mandates that within 30 days of the sanction of the loan, construction of a house should be done therein. The words 'House No.3-1-220, Kakatiya Colony' are mentioned in handwriting therein while the rest of the document appears to be in printed format. When a loan is given for construction of a

house, it is highly unusual for a door number to be mentioned therein since only post construction, such a door number would be normally given.

25. Although the learned counsel for the respondent sought to argue that there was a previous existing structure bearing house No.3-1-220 which was demolished by the respondent and construction of another structure was made by him, there is no material, such as construction permission filed by the respondent to prove that it was he or his mother who constructed the structure which was given house No.3-1-220 by the Warangal Municipal Corporation.

26. Also if according to the respondent, it was he who constructed the structure bearing house No.3-1-220, there ought to be an explanation, why his mother, if granted a loan by the AP Housing Corporation, should again construct a structure therein.

27. Of course these are matters which will be probably explained during trial, but, *prima facie*, they throw a doubt on the claim of the respondent that he is the owner of possessor of the suit schedule property.

28. The municipal tax receipts or municipal assessment record, which is filed by the respondent, do not establish title of the respondent and in a situation, where the title of the respondent appears some what doubtful, it may not be safe to rely upon this material to believe the possession of the respondent and grant him an injunction against the petitioner. The approach of the lower appellate Court in relying on a photograph, filed in the trial Court, but not even marked by the trial Court, is not proper.

29. The lower appellate Court seems to have accepted, without any material, that the house in question is in Sy. No.43 and not in Sy. No.46 ignoring the contentions of the petitioner. The lower appellate Court, while doubting the claim of the petitioner that he constructed the compound wall in the absence of the municipal permission for such construction being filed by the petitioner, ought to have applied the same standard to the respondent, but it failed to do so.

30. Having regard to these circumstances, I am of the opinion that the approach of the lower appellate Court is perverse and therefore its order cannot be sustained.

31. Accordingly, the Civil Revision Petition is allowed and the order dt.05-06-2015 in C.M.A.No.87 of 2012 of the Principal District Judge, Warangal is set aside. Since the suit is of the year 2011, the trial Court is directed to dispose of the suit as expeditiously as possible within six months from the date of receipt of a copy of this order, uninfluenced by any observations made in the order passed by it in the C.M.A. or in the I.A.No.1620 of 2011 or in this C.R.P. No costs.

32. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-09-2015

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