

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: C.M.A.NO.1020 OF 2013

Between:

Devarakonda Prabhakar

.. Appellant(s)

And

Kamarapu Renuka Devi and others

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 22.07.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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| 1. Whether Reporters of Local news papers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

C.M.A.No.1020 OF 2013

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JUDGMENT : (Per Hon'ble Justice R.Subhash Reddy)

This Civil Miscellaneous Appeal is filed by the appellant/plaintiff aggrieved by the order and decree dated 07.10.2013 in I.A.No.314 of 2013 in O.S.No.145 of 2013 passed by the

I Additional District Judge, Warangal, dismissing the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., seeking interim injunction against respondents 4 and 5.

2. The appellant/plaintiff has filed the aforesaid suit for partition and separate possession of 1/3rd share of the suit schedule property. The suit schedule property is shown as Ac.1.00 guntas of land in Survey No.766, Hanamkonda and sub-division Survey No.766/2 situated within Warangal municipal limits.

3. Admittedly, the appellant, his brother and his brother-in-law have jointly purchased the suit schedule property. The appellant's brother-in-law died leaving respondents 1 and 2 as legal heirs. The unmarried brother of the appellant also died and his share to an extent of 1/6th is bequeathed to the 1st respondent and

the remaining share is in favour of the 3rd respondent. It is the allegation of the appellant that though the property is not divided, respondents 1 to 3 have illegally sold major portion of the land in favour of respondents 4 and 5, who are interfering with his possession. Hence, he filed application for injunction in I.A.No.314 of 2013. The Civil Court, by impugned order, dismissed the said application, mainly on the ground that the appellant has failed to prove his possession over the petition schedule property, for grant of injunction as prayed for. Further, it is observed that earlier, the Civil Court has already granted direction to the respondents/defendants not to alienate or change the nature of the petition schedule property.

4. In this appeal, it is contended by Sri Hari Sreedhar, learned counsel for the appellant as the suit schedule property is undivided, the appellant, along with respondents 1 to 3, are in joint possession; as such, respondents 4 and 5, who are strangers, have no right to interfere with the possession of the appellant/plaintiff over the said property.

5. We have perused the plaint schedule which is shown as Ac.1.00 Gts., of land in Survey No.766 of Hanamkonda. The relief in the suit itself is for division of suit schedule property and the appellant himself claimed 1/3rd share in the suit schedule property, but in the petition in I.A.No.314 of 2013, the appellant has sought for

injunction in respect of the entire suit schedule property, though his claim is only to an extent of 1/3rd in the main suit for partition. In the absence of any evidence to show his exclusive possession over the suit schedule property, the Civil Court has rightly dismissed the petition filed by the appellant for injunction.

6. Learned counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in **M.V.S.Manikyala Rao v. M.Narasimhaswami and others**^[1]. We have perused the aforesaid judgment. But having regard to the facts of the present case, the said judgment would not render any assistance in support of the case of the appellant.

7. For the aforesaid reasons, we do not find any ground to interfere with the impugned order, dated 07.10.2013, passed by the I Additional District Judge, Warangal in I.A.No.314 of 2013 in O.S.No.145 of 2013.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. However, as the suit is of the year 2013 and the trial is already commenced, we direct the learned I Additional District Judge, Warangal to dispose of the suit, as expeditiously as possible, preferably within a period of six months from today.

9. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to

costs.

R. SUBHASH REDDY, J

A.SHANKAR NARAYANA,J

22.07.2015

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HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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