

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1838 of 2015

ORDER:

The petitioner herein is the plaintiff in O.S. No.95 of 2013 on the file of the Court of the learned Junior Civil Judge, Jammalamadugu, and the respondents are defendants. The suit was filed for permanent injunction in respect of an extent of Ac.2.14 cents of land in Survey No.524 situated in Besthavemula Village, Mylavaram Mandal, Y.S.R. Kadapa District. The respondents filed written statement. The trial Court, considering the documentary evidence of parties, filed under exhibits P1 to P4 and R1 to R4, and by relying on Ex.P1, allowed the application in I.A. No.361 of 2013 for temporary injunction, by its order dated 25.08.2014. Challenging the same, the respondents herein preferred C.M.A. No.3 of 2014 before the learned II Additional District and Sessions Judge, Kadapa at Proddatur. The said learned Additional District and Sessions Judge set aside the order of trial Court in I.A.No.361 of 2013, by order dated 06.03.2015, holding as follows:

“To decide the genuineness of the documents of both parties, it requires full fledged trial, until unless oral or documentary evidence adduced with regard to the documents filed by both parties, the genuineness or validity of the documents cannot be decided. Both sides have filed pattadar passbooks. 10(1) Account and No.3 Adangals. Therefore it is difficult to arrive to the correct conclusion regarding the genuineness of the documents regarding rights of parties and regarding this possession and enjoyment, in fact ExP1 is not a Will, it is unregistered gift deed and it requires registration and stamp duty penalty. However, it is marked as ExP1. But the genuineness of the document has to be decided since other side is seriously opposing the truth or otherwise of the document. The appellant filed I.A. No.1297/2014 requesting the Court to receive the document i.e., No.3 adangal issued by the Tahsildar, Mylavaram Mandal for Faslis 1936 to 1422 regarding the schedule property.

In the light of these circumstances, I am of the view that the lower Court erred in relying on ExP1 document, without considering the evidentiary document filed on behalf of the plaintiffs. Both parties have filed pattadar passbooks, 1-B Namunas and No.3 Adangals. Therefore to decide the genuineness of the Documents it requires full hedged, plaintiff's contention is that his father acquired right over the suit schedule land through a Will is proved false. Therefore, I find that there

is no *prima facie* balance of convenience in favour of the plaintiff/respondent and the order of the lower Court granting temporary injunction in favour of the plaintiff is not justified. However, the suit is of the year, 2013. Hence the Lower Court can be directed to dispose of the suit as expeditiously as possible. With finding appeal can be allowed by setting aside the Lower Court order passed in IA.No.551/2013. Accordingly the point is answered.”

It is no doubt true that the genuineness or validity of documents has to be decided in trial, but he cannot hold that it is difficult to arrive to the correct conclusion on the basis of documents. As a judge of the lower appellate Court, he should have recorded a finding with regard to *prima facie* title, possession and balance of convenience on the basis of documentary evidence and the pleadings of parties before him.

In the above circumstances, this Court is not satisfied with the order passed by the learned II Additional District and Sessions Judge, Kadapa at Proddatur, and accordingly, the order passed in C.M.A. No.3 of 2014 dated 06.03.2015 is set aside, and the matter is remanded to him for passing a fresh order on the basis of principles for grant of temporary injunction after giving due opportunity to the parties to advance their arguments. The said exercise shall be completed within three (3) months from the date of receipt of a copy of this order, but the pendency of C.M.A. before the learned II Additional District and Sessions Judge, Kadapa at Proddatur, does not operate as stay of proceedings in O.S. No.95 of 2013, which shall be continued.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

01.12.2015

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Date: 01.12.2015

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