

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A.NO.732 OF 2015

JUDGMENT:

This appeal is filed by the appellants/defendants against the order dt.02.09.2015 passed in I.A.No.358/2015 in O.S.No.29 of 2015 on the file of Judge, Family Court-cum-IV Additional District & Sessions Judge, Adilabad wherein the court below granted temporary injunction in favour of the respondent/plaintiff.

For the sake of convenience, parties are referred to as they are arrayed in the suit.

The facts of the case in brief are that the said I.A. was filed by the respondent/plaintiff under Order XXXIX Rule 1 r/w Section 151 C.P.C., for grant of temporary injunction in respect of the suit schedule property bearing H.No.9-39, Plot No.41 admeasuring 40'x60' in S.No.37/1 A & B situated at Dasnapur Village, Gram Panchayat, Mavala Mandal, Adilabad District and the main suit itself is filed for permanent injunction in respect of the suit schedule property. It is her case that she purchased the suit schedule property from defendant No.1 through Ex.P-1, dt.17.02.2012 and she was issued Ex.P-3 ownership certificate,

dt.04.02.2013 and she is paying house tax till date and the said four receipts of house tax were marked as Ex.P-4. She also paid electricity charges and the original bills were marked as Ex.P-5 and Ex.P-6. She was issued voter I.D. card by the Election Commissioner under Ex.P-7. Ex.P-8 is the receipt of complaint from the plaintiff, dt.30.06.2015 issued by Adilabad II Town Police Station. Basing on these documents, she claims that she is in possession of the suit schedule property and sought for injunction.

The first defendant filed counter affidavit in the said application stating that he filed Ex.R-1 certified copy of registered sale deed dt.24.02.1997 and Ex.R-2 certified copy of sale deed, dt.17.02.2012 and it has nothing to do with Ex.P-1. Ex.R-3 is the certified copy of rectification deed dt.01.02.2003 rectifying Annexure-1A of registered sale deed in respect of built up area mentioned in Ex.P-1 and Ex.R-2. He stated that the first defendant executed Exs.R-4 & R-5 registered gift settlement deeds, dt.07.07.2015 in favour of defendant Nos.2 and 3, who claim to be in possession of the suit schedule property. It is also stated that the plaintiff has not mentioned the relationship between the parties, though the first defendant is her father-in-law and defendant Nos.2 and 3 are her

brother-in-laws. It is also stated that the plaintiff suppressed the execution of Ex.R-3 rectification deed by the date of filing interlocutory application.

The trial court, in para 6, basing on Exs.P-1 to P-8 has came to the conclusion that the plaintiff is in possession of the suit schedule property as on the date of filing the suit and the defendants have not filed any document as on the date of filing of the suit along with the interlocutory application and made the interim injunction absolute and passed the impugned orders in the said application. Against the same, the present C.M.A. is filed.

The learned counsel for the appellants/defendants contends that the plaintiff has suppressed the relationship between her and the defendants and though the said issue is raised in the counter, the court below has not considered that aspect. He also submits that the grant of injunction is an equitable discretionary remedy and the same cannot be granted in favour of the persons, who come to the court with unclean hands. He also submits that the plaintiff has suppressed about Ex.R-3 rectification deed rectifying the extent of constructed area in the scheduled property mentioned in Exs.P-1 and R-2, basing on which, the present suit is filed. He

also submits that basing on Ex.P-1 and Ex.R-2 the suit schedule property is amended unilaterally and the said fact is also suppressed. On the ground of suppression of fact, the court below could have dismissed the injunction application. In support of his contention, he placed reliance on a decision of the Supreme Court reported in D.SUGUNA VS. SRI BALAJI VENKATESWARA SWAMY TEMPLE, ALWAL AND ANOTHER^[1] & M/S. POLYMER PAPERS LTD., VS. GURMIT SINGH AND OTHERS^[2].

On the other hand, Sri P.V.Narayana Rao learned counsel for the respondent/plaintiff submits that Ex.P-1 is executed in the year 2012 and pursuant to the same, Exs.P-2 and Ex.P-3 were executed and the records of the Municipal Gram Panchayat Record, Mavala, show that the Executive Officer, Panchayat Secretary, Gram Panchayat Mavala mutated the property situated at Teachers Colony, Adilabad in the name of the respondent/plaintiff and the said fact was admitted by the first respondent/appellant. He also submits that Ex.P-4 electricity bills were also paid by the respondent/plaintiff and she was issued Ex.P-7 original Voter Identity Card by the Election Commissioner. She also produced Ex.P-8

dt.30.06.2015 receipt issued by II Town Police Station, Adilabad, with regard to the complaint given by her. The court below has considered the documents and found that the respondent/plaintiff is in possession of the plaint schedule property and he also submitted that the appellants/defendants have not filed any document to show that they are in possession of the property by the date of filing of the suit and Ex.R-4 and R-5 are executed subsequent to Ex.P-1. As long as Ex.P-1 is in force, the appellants/defendants cannot succeed and he also submits that the validity of Ex.P-1, Ex.P-2 and Ex.P-3 has been gone into at the time of passing orders in the interlocutory application. He also relied on a decision reported in MANOJ DUBEY VS. ELECTION COMMISSION OF INDIA AND OTHERS^[3], DUBAGUNTU SUBRAMANYAM VS. KANMIKOLLU BHAVANARAYANA RAO AND OTHERS^[4], ANAND PRASAD AGARWALLA VS. TARKESHWAR PRASAD AND OTHERS^[5], J.BALAKRISHNA RAJU VS. J.RADHAKRISHNA RAJU^[6] & G.TRINADHA SWAMY VS. GANDHAM SATYANARAYANA & OTHERS^[7].

By filing interlocutory application in I.A.No.358 of 2015 for

grant of temporary injunction in O.S.No.29 of 2015 the respondent/plaintiff mainly relied on Ex.P-1 sale deed said to have been executed by R-1. As per Ex.P-1, the constructed area is shown as 300 square feet, but basing on Ex.P-1, injunction is sought for in respect of the suit schedule property measuring 2400 square feet. Ex.R-3 rectification deed shows respondent/plaintiff unilaterally executed the said rectification deed by altering schedule property in Ex.P-1 sale deed in respect of the constructed area and in this document it is stated whereabouts of the vendor of plaintiff has not been traced though it is shown R-1 as vendor who is none other than father-in-law of respondent/plaintiff which cannot be believed and the said document is also not filed in the suit by plaintiff. The plaintiff also has not disclosed about the relationship between the parties in the interlocutory application though R-1 is none other than her father-in-law and R-1 and R-3 are her husband's brother. It is not known why the plaintiff has suppressed these aspects. As plaintiff himself executed Ex.R-3 rectification deed unilaterally by altering extent in schedule property in Ex.P-3 the same is not binding on R-1. It is also the case of R-1 that he gave complaint to police in respect of same. It is also not known why the close relationship between the parties is

suppressed. Though this aspect was raised by the respondents/appellants in the counter affidavit in the court below, the court below has not considered this aspect at all.

As contended by the learned counsel for the appellants/respondents, grant of injunction is a pure discretionary relief, when the party comes to the court for grant of injunction with un-clean hands, by suppression of material facts, injunction being discretionary is liable to be rejected.

In D.SUGUNA VS. SRI BALAJI VENKATESWARA SWAMY TEMPLE, ALWAL AND ANOTHER (Supra-1) this Court in para-14 held as follows:

“At any rate, the appellant has not approached the trial court with correct facts and clean hands. She has suppressed the material fact of her filing the suit, appeal and second appeal on earlier occasion in respect of the same property and the result thereof. The relief for perpetual or temporary injunction being discretionary, cannot be extended to the parties, who do not represent the correct facts before the courts”.

In M/S. POLYMER PAPERS LTD., VS. GURMIT SINGH AND OTHERS (Supra-2) the High Court of Delhi in para-17 held as follows:

“The fact that defendant No.1 was connected with the business of manufacturing of filtration related machines, prior to the incorporation of the plaintiff No.1 company is not disputed. It is also not disputed that the ‘Memorandum of Understanding’ dated 18-10-1974 was executed and the present plaintiff No.1 company was incorporated as a result thereof. The existence of the partnership firm in which defendants Nos.2 and 3 and plaintiff No.2 are the partners and which is carrying on the same business as that of the company, is also not denied. The facts brought to the notice of the Court by the defendants about the relationship of the aforesaid two groups have not been refuted. Prima facie I accept the submissions of the learned counsel for the defendants that the plaintiffs have suppressed and concealed the material facts and relationship of the two groups and failed to place on record the MOU and the partnership deed in order to gain an advantage over the defendants by obtaining injunction orders in their favour. In view of the suppression of material facts and the law laid down as discussed above, I find that the plaintiffs have played a fraud upon this court and prima facie the plaintiffs are not entitled to any discretionary relief of injunction in their favour.”

In MANOJ DUBEY VS. ELECTION COMMISSION OF INDIA AND OTHERS (Supra-3) the High Court of Allahabad in para-12 held as follows:

“Under these circumstances, in our view, specific mode of identification has been provided under the Statute. Rule 28 of

Registration of Electors Rules 1961, which has already been set out hereinbefore, has clearly specified the mode of identification. Since the manner and mode of preventing the misuse of voting right of impersonation have been specifically provided under the Statutory Rules, the same is required to be followed strictly. It is well settled that if the Statute specifies a particular procedure or mode to be followed the same is to be followed in that way and in no other way.”

This case has no application to the present case on hand, since reliance is placed by the respondent/plaintiff with regard to the issuance of voter identity card issued by the Election Commissioner of India and the court below has dealt with the possession of the suit schedule property.

In DUBAGUNTU SUBRAMANYAM VS. KANMIKOLLU BHAVANARAYANA RAO AND OTHERS (Supra-4) this Court had dealt about the evidence of ouster, but not the suppression aspect.

In ANAND PRASAD AGARWALLA VS. TARKESHWAR PRASAD AND OTHERS (Supra-5) the Supreme Court held that it may not be appropriate for

any court to hold a mini-trial at the stage of grant of temporary injunction. The issue in the present case is with regard to suppression of fact. Hence, this case has no application to the present facts of the case. Similarly, the issue raised in G.TRINADHA SWAMY VS. GANDHAM SATYANARAYANA & OTHERS (Supra-7) and the issue raised in the present case are not one and the same. Hence, this case is also not applicable to the present case.

In view of above facts and circumstances and in view of the law laid down by several courts as referred to supra, I am of the opinion that the plaintiff has not come to the court with clean hands and suppressed material facts.

Accordingly, the C.M.A. is allowed, setting aside the injunction granted by the Judge, Family Court-cum-IV Additional District & Sessions Judge, Adilabad, dt.02.09.2015 in I.A.No.358 of 2015 in O.S.No.29 of 2015. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY

Dt.24.11.2015
TJS.

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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[\[1\]](#)) 2004 (4) ALT 407

[\[2\]](#)) AIR 2002 DELHI 530

3) AIR 2002 ALLAHABAD 167

4) AIR 1954 ANDHRA 17 (Vol.41, C.N.11) (1)

5) (2001) 5 SCC 568

6) 2014 (4) ALT 570

[\[7\]](#)) AIR 2006 ANDHRA PRADESH 381