

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

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CIVIL MISCELLANEOUS APPEAL No. 558 of 2015

JUDGMENT: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Appellants are the petitioners in I.A. No.116 of 2015 in O.S. No.4 of 2015 on the file of VI Additional District Judge at Godavarikhani, Karimnagar District. Assailing the order dated 05.06.2015, whereby and whereunder, the request for grant of temporary mandatory injunction to restrain the respondents from raising further illegal constructions in an extent of Ac.0-10 gts in Sy.No.165 situated at Malkapur village of Ramagundam Mandal bounded on the north by Rajeev Rahadari Road was refused, the instant appeal is preferred.

2. The fact-situation occurring in the instant case is that the appellants filed above suit seeking declaration of title, recovery of possession, mandatory injunction and direction for removal of the constructions raised by respondent Nos.1 to 5 in the suit schedule property. Along with the institution of suit, they filed I.A. No.116 of 2015. The relief sought in the interlocutory application reads thus:

"For the reasons mentioned in the accompanying affidavit, the petitioners/plaintiffs herein prays that the Hon'ble court may be pleased to grant ad-interim ex-parte Mandatory injunction in favour of the petitioners/plaintiffs against the

respondents/defendants no.1 to 5 restraining the respondents/ defendants, their servants, agents, henchmen, etc, from raising further illegal construction in the suit land in Sy.No.165 adm. Ac.0.10 gts situated at Malkapur Village, Godavarikhani of Ramagundam Mandal of Karimnagar district, more specifically described in the suit schedule annexed to the plaint shown in the rough sketch map and pass such other order or orders as deems fit and proper in the circumstances of the case."

3. The appellants' stand has been that one Mohd. Shaffiyudin was the original pattedar and owner of the land of Ac.1-30 gts in Sy.No.165 situated at the outskirts of Malkapur, Ramagundam Mandal and one Chelpuri Chantaiah was the protected tenant and his name was entered as such in the tenancy register and issued 38E certificate, and thereby, he became absolute owner of the said land, and after his demise, it was inherited by Chelpuri Mallaiah, who sold the entire extent to appellant No.2 under a registered sale deed dated 03.11.1978, and appellant No.2, in turn, executed simple sale deed in favour of appellant No.1, having obtained Lok Adalat award in O.S. No.171 of 2014 on the file of the Senior Civil Judge, Peddapalli, vide L.A. Case No.163 of 2014 concerning Ac.0-10 gts of land, which is the subject matter herein. Claiming that appellant No.2 has been in actual and continuous possession of the entire land of Ac.1-30 gts and respondent Nos.1 to 5 have been unjustly interfering with his possession over said land by

digging trenches, sought the aforesaid relief.

4. Respondent Nos.1 to 5 resisted the request by filing counter before the court below, of course, admitting that the said Mohd. Shaffiyudin was the original pattedar, but disputed that Chelpuri Chantaiah being the protected tenant, in whose favour, tenancy certificate was issued in O.S. No.13 of 2014 on the file of the very same court, showing the extent of Ac.1-24 gts only. It is stated that respondent No.2 purchased the said extent from Kummari Mallaiah under a registered sale deed in the year 1984 and was put in possession, and subsequently, he sold Ac.0-10 gts to one G.Shankar, and when there was dispute between Kummari Mallaiah and his brothers, by name Narsaiah and Chinnaiah, who sold the property under registered sale deeds to Chinthakindi Rajesham and Ch.Ramaraju claiming joint ownership, in order to avoid disputes and complications, respondent No.2 obtained registered sale deed from Rajesham and Ramaraju in his favour, and even appellant No.2 attested the said sale deed. It is also stated that Lok Adalat award dated 18.12.2014 was a collusive one to defeat his rights. It is also stated that respondent No.2 filed suit in O.S. No.13 of 2014 against the sons of original owner Mohd. Shaffiyudin and his alleged vendors, in which Puli Vijay Kumar is the 1st defendant, brother of Puli Prasad (appellant No.1 herein), and he has also filed I.A. No.232

of 2014 in O.S. No.13 of 2014, and on contest, injunction was granted allowing the main petition, and that, that was the reason appellant No.1 and his brother Puli Vijay Kumar hatched up a plan and filed a false suit against Mekala Rajesham in O.S. No.177 of 2014 for permanent injunction and got passed an award in the Lok Adalat having colluded together.

5. According to respondent No.2, a compound wall was constructed around the entire land of Ac.1-20 gts and he obtained dealership of Honda Motorcycle and constructed a show room and he gifted 1167 square yards to respondent No.1 through a registered deed dated 15.09.2014 and applied for permission to construct a building, and since the Corporation did not give any reply within the stipulated time, he proceeded with construction.

6. It is also according to respondent No.2, he filed O.S.No.31 of 2006 on the file of the Junior Civil Judge, Godavarikhani, when Bolgam Laxmi Devi and others tried to interfere with their possession and even interim order granted in his favour is in force and the suit is still pending. He was even given pattedar passbook and title deed in the year 1992 itself after due enquiry, and when Rajeev Rahadari Road was laid, Ac.0-02 gts was acquired in Sy.No.165, for which he was shown as owner, and, thus, respondent Nos.1 to 5 sought to reject the request.

7. During enquiry before the court below, appellants exhibited Exs.P.1 to P.13; whereas, respondents exhibited Exs.R.1 to R.24. The court below, on appraisal of the said documentary evidence, observing that the name of appellant No.2 is not reflected in pahanies for the years from 1978-79 to 1995-96, and the simple sale deed executed by appellant No.2 in favour of appellant No.1 was not reflected in the revenue records and the award of Lok Adalat is of no use since the title was not conveyed to appellant No.1 by appellant No.2, and the order dated 31.10.2014 in I.A. No.232 of 2014 in O.S. No.13 of 2014 marked as Ex.R.24 shows that respondent No.1 in that I.A. is Puli Vijay Kumar, who is brother of appellant No.1 herein, and since no pattedar passbook is forthcoming from appellant No.1, the sale deed in favour of appellant No.2 was never acted upon and thereby, dismissed the petition.

8. It is the aforesaid order which is under challenge in the instant civil miscellaneous appeal contending in the grounds that the court below has not properly appreciated the documentary evidence filed by the appellants, and, in fact, the sale deed in favour of appellant No.2, from whom appellant No.1 purchased the land in the year 1978 is prior to the purchase set up by respondent No.2 in his favour and the court below also overlooked the award passed by the Lok Adalat, and,

thus, sidelined the crucial aspects, and, therefore, sought to set aside the order under challenge.

9. Heard Sri M.Ramalingeswara Reddy, learned counsel for the appellants, and Sri C.Mohan Prakash Rao, learned counsel for the respondents, and perused the order and the material on record.

10. At the outset, we would like to observe that the very relief claimed by the appellants in I.A. No.116 of 2015 appears to be mis-conceived. This apart, except filing copy of Lok Adalat award in Ex.P.1 and other documents being certified copies of pahanies in Ex.P.3, plaint in O.S.No.31 of 2006, caveat petition No.22 of 2014, registered documents in Exs.P.5 to P.12 and plaint in O.S.No.171 of 2014 on the file of the Senior Civil Judge, Peddapalli, no other documentary evidence is forthcoming to prove the *prima facie* case of the appellants including their possession till the date of alleged unjust interference by the respondent Nos.1 to 5 by way of digging trenches in the scheduled land on 06.03.2015. Since the very relief claimed by the appellants is for recovery of possession, admittedly appellant No.2 is not in possession of the petition schedule property. When the documentary evidence filed on behalf of the respondents concerning the petition schedule property, which are injunction orders granted in favour of respondent No.2 in O.S. No.13 of 2014, in which appellant No.1's natural brother was the 1st

defendant and even injunction order in favour of respondent No.2 in O.S. No.31 of 2006 on the file of the Junior Civil Judge, Godavarikhani, filed against one Bogam Laxmi Devi and others, is still in force and the pattedar passbook and title deed were issued even in the year 1992 would all favour respondent No.2's case. Concerning Lok Adalat award, the court below has assigned reasons as to why the same cannot be given any weight. Thus, viewed from any angle, when the construction has already come up, the question of restraining the respondents from making further constructions, at this stage, will not arise. Thus, at this stage, there appears to be no *prima facie* case in favour of the appellants and balance of convenience also does not lie in their favour, and, therefore, the order under challenge cannot be upset. However, we are of the view, that the relief sought by the appellants in the suit requires a thorough probe in the light of the contentions raised that one Chelpuri Chaintaiah was the protected tenant and granted 38E certificate, whereas the respondents aver that one Kummari Mallaiah was the protected tenant, though, admittedly, Mohd. Shaffiyudin was the original pattedar, and other aspects, which we have referred to in the above including the award passed by the Lok Adalat, in which the respondents are not parties, can only be gone into during trial. However, we observe that the trial court would dispose of the suit uninfluenced by the

observations made in the above.

11. With the above observations, the instant Civil Miscellaneous Appeal is dismissed confirming the order dated 05.06.2015 in I.A. No.116 of 2015 in O.S. No.4 of 2015 passed by the court below. No order as to costs.

12. As a sequel thereto, miscellaneous petitions, if any pending in this appeal, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

Date: 24.08.2015
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