HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.367 OF 2015

AND

CONTEMPT CASE No.1375 OF 2015

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

The Civil Miscellaneous Appeal is directed against the order, dated 18-02-2015, in I.A. No.216 of 2007 in O.S. No.266 of 2007, passed by the learned II Additional Chief Judge, City Civil Court, Hyderabad, aggrieved by the refusal to grant interim injunction under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 against respondents from making any demolition of structures in the suit schedule property and taking up construction, alteration or addition in respect of the suit schedule property.

2 . The appellant herein filed the above suit seeking partition and separate possession of scheduled property bearing Municipal No.6-3-1186/A, admeasuring 2000 square yards, situated at Raj Bhavan Road, Begumpet, Hyderabad within specified boundaries mentioned in the plaint schedule.

i) The case of the appellant is that herself and respondent Nos.1 to 3 are daughter and sons of Sri G. Ramalingam, who was the absolute owner of the plaint schedule property. Her father and respondent

Nos.1 to 3 were carrying on a Hotel business under the name and style 'Hotel Blue Moon' by constituting a partnership firm called 'G. Ramalingam and Sons' under a partnership deed, dated 18-04-2001. His death occurred on 22-01-2004. Their mother Smt. Saraswathi predeceased him.

ii) According to her, after the death of their father, respondent Nos.1 to 3 with a *malafide* intention to deprive her legitimate right, did not include her in the partnership firm, nor settled the accounts, despite repeated demands made by her. According to her, she is entitled to $1/4^{th}$ share.

iii) She states that the Municipal Corporation of Hyderabad has acquired some portion from the schedule property in August, 2006, and respondent Nos.1 to 3 projecting themselves as heirs of late G. Ramalingam, collected a sum of Rs.20,00,000/- (Rupees twenty lakhs) and did not apportion her share.

iv) She states that respondent Nos.1 to 3 have entered into a development agreement with the respondent No.4 entrusting it the work of construction of multi-storied commercial complex by dismantling the Hotel Blue Moon structure. They have even collected Rs.10.00 Crores as non-refundable advance from respondent No.4 and they did not pay even a single pie to her towards her share. Hence, she laid the suit for partitioning schedule mentioned property by metes and bounds and to allot $1/4^{th}$ share to her, and also $1/4^{th}$ out of the compensation amount received by respondent Nos.1 to 3 from the Municipal Corporation with interest at 18% per annum thereon.

v) By filing I.A. No.216 of 2007, initially ad-interim injunction was obtained. When interlocutory application was finally decided, the same was vacated, by the order under challenge herein. That is how the appellant is before us, requesting to set aside the order and to grant temporary injunction pending disposal of the suit.

3. Respondent No.1 filed his separate counter, whereas respondent Nos.6 to 9 filed their common counter and respondent Nos.2 and 3 remained *ex parte*. The appellant herein has not chosen to file copy of counter affidavit filed by respondent No.4, if any, as the order is silent as to whether respondent No.4 has filed counter affidavit or not, or whether he remained *ex parte*. Only copy of the common written statement filed by respondent Nos.6 to 9 is placed in the material papers and other papers, which are not that significant to decide the controversy herein.

4. As seen from the impugned order, respondent No.1 appears to have taken his stand that the partnership deed envisages that the first partner Sri G. Ramalingam agreed that after him, the partnership shall continue with the other three partners with equal sharing and rights and, therefore, the entire share capital and all other rights shall be devolved on the remaining three partners i.e., himself and respondent Nos.2 and 3 as per clause 11 therein and, therefore, the suit for partitioning the properties and to allot share to the appellant does not arise.

i) Respondent No.1 states that 'Blue Moon Hotels Private Limited' originally consisted of 2876 square yards with structures. Subsequently, an extent of 1387 square yards was sold in favour of their partnership firm i.e., M/s Ramalingam and Sons under a registered sale deed, dated 10-04-1979. Thereafter, in the road widening that took place in 1983, an extent of 270 square meters was acquired. Again, an extent of 493 square meters was acquired in 2005, and what remained was 505 square meters with the firm. He has also stated that as per the new HUDA Master Plan, there is likelihood of loosing another 150 square meters by the partnership firm. Therefore, the stand of the appellant that the suit property consists of 2000 square yards is wrong and not available for partition as claimed by the appellant and she is not even entitled to 1/4th share. He has also stated that the partnership firm indebted to various financial institutions, and they were intending to dispose of the land and clear off the debts.

ii) It is stated that as per the registered document,
dated 10-04-1979, filed by the appellant, the total extent is only 1375 square yards, and even he claims that there was no demand by the appellant for claiming share or settling the accounts except sending a notice, dated 15-04-2007. As far as the compensation amount received from the Municipal Corporation of Hyderabad is concerned, he states that the same was utilized for clearance of debts of the partnership business and there is nothing left to pay to the appellant. While denying the allegation that respondent No.4 paid Rs.10.00 Crores to himself and respondent Nos.2 and 3 for developing the property, he states that the property of the 'Blue Moon Hotels Private Limited' was handed over to respondent No.4, for which, the above amounts were advanced to him. Contending that the existing structures on the property were already demolished, and if respondent No.4 makes any construction over the said property, no prejudice would be caused to the appellant, and that the appellant will get only 1/16th share in the property, admeasuring 500 square meters which is negligible, sought to dismiss the petition as no injunction can be granted restraining respondent No.4 from developing the schedule property.

5. Respondent Nos. 6 to 9, in their common counter, initially averred what all respondent No.1 has stated as regards the total extent of Blue Moon Hotel; alienating a part thereof to the Firm; acquiring 763

square meters by the Municipal Corporation of Hyderabad and the remaining extent being 505 square meters. According to them, the rest of the property belonging to the firm was mortgaged to the Charminar Co-Operative Urban Bank Limited, Hyderabad for obtaining loan, and since the firm defaulted in clearing the debt, the bank proposed to bring the property for sale, and at that stage, when respondent Nos.1 to 3 approached respondent No.4 in 2007 offering the property for development so as to discharge the bank loan and get the title deeds released which offer was accepted by respondent No.4 and respondent Nos.6 to 9 accepted the offer, and in good faith, they paid a sum of Rs.7.57 Crores to the said bank in the months of March and April, 2007 and got the schedule property released from the mortgage. They also paid Rs.4,70,15,774/- to the 'Blue Moon Hotels Private Limited' and the partners of 'Ramalingam and Sons' in 2007. They have also paid Rs.12,46,569/- to Commercial Tax Department on 9th and 21st January, 2008 and Rs.2,40,000/- on 28-02-2008 towards arrears of Sales Tax payable by M/s Ramalingam and Sons for Blue Moon Hotel. They have also paid Rs.8,41,444/- and Rs.15,480/- to the Greater Hyderabad Municipal Corporation towards arrears of property tax and tax arrears for Blue Moon Hotel site, respectively; Rs.4,00,000/- to E.S.I., Hyderabad towards employees ESI arrears payable by Blue Moon Hotel and Rs.4,26,217/- towards provident fund arrears in favour of ESI on 28-01-2013 and Rs.2.50 lakhs on 05-05-2010 for removing huge debris stocked on the site for Blue Moon Hotel. They made preparations for proposed constructions under the development agreement - cum - General Power of Attorney, dated 16-04-2007. They obtained no objection certificate from the Airports Authority of India, Hyderabad, dated 26-11-2010, and they have paid necessary amounts and got the approved plan for proposed construction under the development agreement vide proceedings of the Commissioner, GHMC in LR.No.16002/06.03/ 2012-2013, dated 13-06-2013. Thus, the appellant having been conscious of all the expenses meted out by them, she is stopped from disputing their rights.

i) According to them, they entered into agreements with 'M/s Ramalingam and Sons' and 'M/s Blue Moon Hotels Private Limited' on 16-04-2007 and spent more than Rs.15.00 Crores over the property, but in spite of the same, respondent Nos.1 to 3 got filed the aforesaid suit to extract more amount from them.

ii) According to them, only 604 square yards of land remained, and even if the appellant succeeds in the suit, she will get only 151 square yards. According to them, 'Ramalingam and Sons' purchased 1387 square yards under registered sale deed, dated 10-04-1979, and the share of 1/4th of 'Ramalingam and Sons' works out to 346.75 square yards, in which the appellant's 1/4th share works out to 86.68 square yards equivalent to 72.47 square meters which cannot be utilized for any purpose and, therefore, the appellant is not entitled to seek the relief of injunction and sought to dismiss the petition.

6 . Respondent Nos.5 to 8 are impleaded by the appellant. Respondent No.1 filed additional counter. A re-joinder was filed by the appellant. Therefore, the allegations in the additional counter filed by respondent No.1 and re-joinder filed by the appellant are not that material to decide the controversy herein.

7. Before the court below, no documents were marked by either side. The court below, on hearing both sides, taking into consideration that the appellant is entitled to 1/16th share and also keeping in view that respondent Nos.1 to 3 have received huge amounts as advance out of which a sum of Rs.7.57 Crores was utilized for clearing the debts of the partnership business to the Charminar Co-operative Urban

Bank Limited and also keeping in view that respondent Nos.4 and 6 to 9 have paid huge amounts to GHMC for obtaining sanction for construction of building and even tendered huge amounts to other departments for clearing property tax and other taxes, opining that the appellant's request for grant of injunction as prayed as unreasonable and further opining that the appellant may get only 40 square yards in the property, which is negligible, directed the respondents not to sell $1/16^{th}$ share of the appellant in the developed area to be allotted to respondent Nos.1 to 3 and dismissed the petition by vacating the ad-interim injunction earlier granted.

8 . Aggrieved of the aforesaid order and decree, the appellant preferred the instant civil miscellaneous appeal contending in the grounds of appeal that the court below ignored the documentary evidence field by the appellant and accepted the case of the respondents as gospel's truth without even referring to the documents filed by the respondents.

9 . It is also stated that the court below, in fact, decided the controversy in the main suit itself by tendering a positive finding that the appellant is entitled only to $1/16^{th}$ share from out of the 624 square yards of land, which ought not to have been done. It is stated that the court below ought not to have recorded a definite finding that the appellant is entitled to a negligible share. It is further stated that it is settled law that nature of property cannot be altered during the pendency of the suit for partition, but the said principle is overlooked by the court below. Hence, sought to set aside the order challenged herein and grant injunction as prayed for.

10. Contempt Case No.1375 of 2015 is filed by the appellant in the instant appeal under Sections 10 to 12 of the Contempt of Courts Act, 1971, requesting the Court to punish the respondents for willful

disobedience of *status quo* orders passed by this Court dated 05.06.2015 in C.M.A.M.P. No.740 of 2015 in the said C.M.A. It is stated by the petitioner that this Court granted *status quo* order on 05.06.2015 and the personal notice was carried out and the notices were served on respondents on 09.06.2015 and the respondent Nos.4 to 8 entered their appearance on 16.06.2015 and filed vacate stay petition. According to the petitioner, on the date of passing of the interim orders by this Court, the RCC slab was not laid and the photographs dated 10.06.2015 would show that steel laying was going on and when the petitioner took photographs again on 08.07.2015, the roof laying work was completed and, thus, there has been deliberate violation of the interim orders passed by this Court. Therefore, to punish the respondents.

11. Heard Sri Mohd. Adnan, learned counsel for the appellant, Sri Bharadwaj, learned counsel for respondent No.1, and Sri T.Sreedhar, learned counsel for respondent Nos.4 to 8.

12. Learned counsel for the appellant would submit that without the knowledge and consent of the appellant, respondent Nos.1 to 3 have entered into agreement with respondent No.4, a builder, though, she is legitimately entitled to 1/4th share in the suit property and even the amount towards compensation paid by the GHMC when a portion of the suit property was acquired for widening the road, respondent Nos.1 to 3 did not give any amount towards her share and despite repeated demands for partition of the property, respondent Nos.1 to 3 paid deaf ear and with mala fide intention, entered into agreement with respondent No.4 to deprive her share in the suit property. It is also his submission that respondent No.4 along with other respondents is making hectic efforts to construct the building without approved plan and sanction from the municipal authority and if once the construction is allowed to be made, the very nature of the property would be altered making it inconvenient for partitioning the

property by metes and bounds and allotting 1/4th share to the appellant. It is his submission that the court below recorded positive finding in the interlocutory application that the appellant is only entitled to 1/16th share, which ought to be determined only in the suit upon proper adjudication and dismissing the petition by the court below was improper, which, in other words, which by necessary interference amounting to allowing the respondents to go with the construction. It is also his submission that no amount was given to the appellant, though, it is alleged that huge amount was advanced by respondent No.4 to respondent Nos.1 to 3. Placing reliance on the decisions in **Syed Mubasheruddin Ahmed and others Vs. Syeda Nushat Murtuza** and **Lakshmi alias Bhagya Lakshmi Vs. E.Jayaram (D) by LR**, sought to grant temporary injunction by setting aside the order under challenge.

13. Learned counsel for respondent Nos.4 to 8 would submit that the share of the appellant would work out to 1/16th, whereas respondent Nos.1 to 3 are entitled to 5/16th share each as of the partnership deed reflects 'M/s Ramalingam and Sons', a partnership business, that the father of the parties, i.e., appellant and respondent Nos.1 to 3, was holding 1/4th share and on his death, the appellant would become entitled to 1/4th share in the 1/4th share of her father. It is his submission that huge amounts were spent in clearing the outstanding loan amount, which debt was contracted by the partnership firm in releasing the mortgage properties and getting back the title deeds from the bank and even they paid the amounts due to the commercial tax department and property tax to municipal authorities and other amounts. It is also his submission that the plans were also submitted to the municipal authorities for approval and sanctioning the same for construction of multi-storied building and requisite fee was also paid therefor and, thus, the amounts were invested by respondent Nos.4 to 8 long prior to the institution of the suit and at this stage, merely on the ground that the appellant is entitled to 1/16th share, she cannot

seek the injunction restraining respondent Nos.4 to 8 from pursuing the construction work. It is his submission that in case injunction is granted, great inconvenience would be occasioned to the respondents rather than to the appellant and, thus, supported the order of the court below.

14. Learned counsel for respondent No.1 adopted the arguments advanced by the learned counsel for respondent Nos.4 to 8.

15. According to the appellant, the suit property consists of 200 square yards bearing Municipal No.6-3-1186/A, situated at Raj Bhavan Road, Begumpet, Hyderabad within specified boundaries mentioned in the plaint schedule. The case of respondent Nos.1 to 3 is that Hotel Blue Moon Private Limited was owning and possessing a total extent of 2876 square yards with structures thereon, from which, an extent of 1387 square yards, equivalent to 1160 square metres, was sold in favour of ‘M/s Ramalingam and Sons’ under a registered sale deed dated 10.04.1979. Thus, it is their specific case that ‘M/s Ramalingam and Sons’ owned and possessed by virtue of the said sale deed an extent of 1387 square yards only, in which the appellant got a share to the extent of 1/16 square yards that being 1/4th share out of their father’s 1/4th share in ‘M/s Ramalingam and Sons’. It is their case that HUDA has initially acquired 270 square metres for road widening purpose and later, in 1983, further extent of 493 square metres was acquired and, thus, what remained was only 505 square metres available to ‘M/s Ramalingam and Sons’, in which alone the appellant is entitled to 1/16th share. As regards definite share to which the appellant is entitled to, the said question has to be decided in the main suit. For the purpose of disposal of instant civil miscellaneous appeal what is required to consider is, whether the injunction sought for by the appellant can be granted or whether the direction given by the court below directing respondent Nos.1 to 3 not to sell 1/16th share in the developed area to be allotted to respondent

Nos.1 to 3, in case the appellant succeeds in the suit can be affirmed.

16. We have perused the order under challenge and the material on record. A perusal of the plaint in paragraph No.8 would show that the appellant made a definite averment that respondent Nos.1 to 3 have collected a sum of Rs.10.00 Crores (Rupees ten crores) as non-refundable advance from respondent No.4 and they have not paid even a pie to her towards her share. Thus, this categorical admission made in the pleading would undoubtedly show that respondent Nos.4 to 8 have not only advanced Rs.10.00 Crores, out of which Rs.7.57 Crores probably seems to have been utilized for clearing the debt in releasing the property under mortgage as the suit property was under the mortgage with the bank. We have already referred to while narrating the averments in the pleadings hereinbefore that the fourth respondent has not only advanced Rs.10.00 Crores but also spent the amounts which details are given in the above towards payment of commercial tax, property tax and other incidental charges. Thus, it is not in dispute that huge amounts have been spent by respondent No.4 with a view to carry on the construction of multi-storied building and the existence of agreement between respondent Nos.1 to 3 and respondent No.4 that they should share in equal half shares after construction of flats.

17. Certain documents have been placed before this Court by respondent No.4. The proposed construction according to respondent No.4 is to the total super built up area aggregating to 60,000 square feet in all the five floors, i.e., at the rate of 12,000 square feet per floor and the total number of floors being five and the built up area permissible as per the building rules is 30.5 square feet per one square yard. So, according to them, after the land was acquired for widening the road, the area remained with 'M/s Ramalingam and Sons' is 604 square yards only and that extent was taken by the respondent No.4 besides the other extent of 1360

square yards belonging to 'M/s. Blue Moon Hotels Private Limited', which, according to the parties, admittedly, is not the subject matter herein. During the pendency of the instant appeal at one stage, an attempt was made by the parties themselves to amicably settle the disputes, but somehow, it appears to have not been fructified.

18. Now, turning to the relief claimed by the appellant for temporary injunction, as seen from the petition filed under Order 39 Rules 1 and 2 read with Section 151 CPC in I.A. No.216 of 2007 in O.S. No.266 of 2007 is to injunct respondent Nos.1 to 8, their men, agents, GPAs, SPAs and persons claiming through and under them, firstly, from making any further demolitions of the suit schedule property; second, taking up any construction; third, from altering; fourth, from making any additions in respect of the suit schedule property pending disposal of the suit. Thus, multiple reliefs are claimed by the appellant in one and the same application, which is contrary to the Rule 55 of Civil Rules of Practice, as there shall have to be a separate application for each of the reliefs claimed by the appellant. Thus, the very petition itself is vague in nature in claiming appropriate relief by the appellant.

19. Now, the question is whether any one of the reliefs sought for by the appellant atleast can be acceded to. Learned counsel for the appellant, no doubt, placed reliance on a decision in **Syed Mubasheruddin Ahmed**'s case (supra 1) rendered by a Division Bench of this Court, but as seen from the facts therein, the claim of the appellant-plaintiff was for 2/3rd share in the plaint schedule property. The objection raised by the respondents was that the appellant, being a Pakistani national, does not acquire any right in the property in India and, therefore, the suit filed by her itself was not maintainable. This Court, keeping in view, that the appellant was the major shareholder to the extent of 2/3rd share in the suit schedule

property and opining that it was not desirable to alter the nature of property till the disposal of the suit, allowed the civil miscellaneous appeal by confirming the findings recorded by the court below in granting temporary injunction mainly on the ground that once the constructions are made, the interest of third parties would be created, thereby complicating the issues involved apart from resulting in multiplicity of proceedings. The other decision in **Lakshmi alias Bhagya Lakshmi's** case (supra 2), the relief claimed was for specific performance. The Hon'ble Supreme Court keeping in view, the fact-situation occurring therein that the plaintiff No.2 was in possession of the property as a tenant under plaintiff No.1 and since the possession of plaintiff No.2 was not denied, the interim protection given to plaintiff No.2 against the threatened action of the defendants to evict her without following due process of law has set aside the order passed by the High Court by allowing the appeal and directed the trial court to hear and dispose of the suit within a period of four months from the date of receipt of copy of the order.

20. In the instant case, admittedly, the appellant is not the major shareholder. Even if she succeeds, she would be entitled to either 1/4th share or 1/16th share, as the case may be, as contended by the respective parties, and, thus, she cannot be construed as having major share in the suit property; second, the appellant herself admits specifically that the respondent No.4 has advanced huge amount of Rs.10.00 Crores. Though, such an averment is made in the plaint in the context of respondent Nos.1 to 3 not paying even single pie to her towards her share, still, the fact that such an averment made by her amounts to a definite admission made in the plaint and cannot at all be ignored in looking at whether the appellant has got *prima facie* case and balance of convenience lies in her favour and that she would suffer irreparable loss, if injunction is refused. We are of the view, that the decisions relied on by the learned counsel for appellant would not render any assistance to her in granting injunction as prayed for, for the aforesaid reasons. However, her interest requires

to be protected. In that view of the matter, the court below has given a direction to the respondent Nos.1 to 3 not to dispose of 1/16th share in the property to be allotted to the appellant after completion of the construction, in case she succeeds in the suit. We would like to slightly modify the order passed by the court below, which, in our opinion, would be reasonable in the circumstances of the case to protect the interest of the appellant.

21. As mentioned hereinbefore, the total super built up area for both the plots as proposed by respondent Nos.4 to 8 is 60,000 square feet for five floors. We are not adverting to the question whether there has been sanction accorded by the municipality or whether sanction is yet to be obtained as respondent Nos.4 to 8 are obligated with the duty to obtain sanction for construction of the building and the municipal authority is concerned with the said issue. In the proposed construction, the built up area on the plot of 604 square yards works out to 18,422 square feet. Since the owner's share is 50%, it works out to 9,211 square feet and 1/16th share works out to 575.6 square feet. The appellant has not specifically averred anywhere as to how she is entitled to 1/4th share in the suit property belonging to 'M/s Ramalingam and Sons'. Thus, even keeping in view, the appellant is entitled to 575.6 square feet towards 1/16th share, in case she succeeds, we intend to direct respondent Nos.1 to 3 not to dispose of 1000 square feet built up area in the first floor towards front side, facing the road so that in case the appellant succeeds, it would be convenient in working out equities while passing the final decree. Thus, the order passed by the Court below directing the respondent Nos.1 to 3 not to dispose of 1/16th share is modified to that of 1000 square feet built up area in the first floor towards front side facing the road.

22. The instant Civil Miscellaneous Appeal is, thus, allowed in part

modifying the order passed by the Court below as indicated in the above. In the circumstances, there shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this appeal, shall stand closed.

23. We have gone through the order passed by us dated 05.06.2015. Except the photographs filed by the petitioner in the Contempt Case, there is no other material to positively prove the deliberate violation of *status quo* orders issued by this Court. Further, we would like to observe that in the CMA filed by the petitioner, the respondent Nos.1 to 3 are directed not to dispose of 1000 square feet built up area in the first floor towards front side, facing the road by modifying the order passed by the Court below. We are, therefore, not inclined to accede to the request of the petitioner herein to punish the respondents. Hence, the Contempt Case is closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

6th October, 2015.

Mgr/siva