

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4739 of 2016

ORDER:

The revision petitioner by name C. Yadava Rao is the plaintiff in O.S.No.1792 of 2015 on the file of V Junior Civil Judge, City Civil Court, Hyderabad. The suit filed in the August 2015 is for the relief of permanent prohibitory injunction restraining the defendant Nos.1 to 3, amongst defendant No.1 is the brother of the plaintiff and defendant Nos. 2 and 3 are sons of 1st defendant, from dispossessing the plaintiff from the plaint schedule property and for costs and other reliefs.

2. The plaint averments in brief in support of the suit claim are that the plaintiff is absolute owner and possessor of the mulgi H.No.21/1/1119 of Pathargatti, Hyderabad, as a legatee by virtue of the bequeaths made by his mother in the will dated 04.08.1979. The plaintiff is claiming as carrying textile business in the premises and the abutting premises 21-1-1120 since 2009 in the name and style of new CN Brothers. The plaintiff got 2 brothers including the 1st defendant and another brother C.Narahari Rao and their father's name is C. Satyanarayana and the 3 brothers and their father were stated carrying cloth business in partnership with name and style of M/s. CN Brothers at the premises covered by the two mulgies since 1957 and subsequently from retirement of their father from said business, by entering into fresh partnership between the plaintiff and 2 brothers including 1st defendant on 01.07.1997 whereunder the share in the earlier firm of their father of 25% was distributed among the 3 brothers in the ratio of 34:33:33 and said partnership dated 01.07.1997 continued

till 2009 and that was also later dissolved and subsequently plaintiff alone thereby is carrying said business in the 2 mulgies.

3. It is also averred that the 1st defendant and plaintiff filed a criminal complaint against their brother C.Narahari Rao where he was arrested and later he stopped coming to the premises and subsequently plaintiff and 1st defendant alone were jointly doing business with the share 50-50 as per the understanding between them and plaintiff reposed confidence and good faith on 1st defendant in his maintaining accounts, entrusting the keys of cash counter and whole business. However 1st defendant, with connivance with his 2 sons i.e., defendant Nos.2 and 3 with ulterior motive and fraudulent intention, is not allowing the plaintiff to verify accounts, daily cash book and other documents and withholding monthly amounts of plaintiff agreed to be withdrawn by each of the 2 partners and not accounting for the business transactions to enrich himself unlawfully and to cause wrongful loss to the plaintiff by siphoning, swindling and embezzling funds and profits of the firm for own benefit of defendants and detrimental to the interest of the plaintiff with deception and breach of trust in causing wrongful loss to the plaintiff for their wrongful gain.

4. It is also averred that they failed to give even reply to the notice of plaintiff to render accounts and for inventory of the firm stocks, assets and good will etc., indicating to dissolve the firm after expiry of 15 days of notice received by them and the defendants are not responding to the same by dodging the matter and in the end of 2009 plaintiff filed criminal case against the

defendants and elder brother of plaintiff and his 2 sons and the learned Magistrate referred the same for police investigation. While so, defendant Nos.1 to 3 through antisocial elements, giving threats for withdrawal of said criminal case and to vacate the suit schedule property bearing No.21/1/1119 saying adjacent shop No.21-1-1120 belongs to C.Narahari Rao and the 1st defendant came to the premises on 24.07.2015 with antisocial elements and tried to dispossess and to lock the premises, but for the timely interference of the neighbouring persons. It is also averred that they warned the plaintiff saying if shop No.21-1-1120 not being handed over, they will take possession of the same and they tried to repeat the same on 05.08.2015 by creating nuisance, which made plaintiff to approach the Charminar Police. On seeing police, they left the premises and however police stated it is a civil dispute to approach civil Court. The shop No.21-1-1120 belongs to 1st defendant and elder brother CN Rao only. However, for the 2 shops bearing No.21-1-1119 & 21-1-1120 though there are shutters there is no separating wall in between since 1957. It is also averred that without settling account, they cannot demand the plaintiff to vacate the shop No.21-1-1120 and their demands are illegal and Narahari Rao their brother filed R.C.No.188 of 2009 on the file of II Additional Rent Controller for eviction against the plaintiff and 1st defendant and the same was dismissed and RCA filed is pending before the Chief Judge, City Small Causes Court, Hyderabad, and another suit O.S.No.152 of 2009 filed by elder sister of plaintiff and 1st defendant against them and Narahari Rao which is also pending before the Chief Judge, City Civil Court, Hyderabad, for partition and separate possession of the properties

and there are also other disputes. It is thereby sought for restraining the defendants from attempting to dispossess the plaintiff from the schedule mentioned shop Nos.21-1-1119 and 21-1-1120.

5. The written statement filed by the defendants is with contest that the plaint and suit claim averments are false, fabricated and the alleged will said to have been executed on 04.08.1979 by mother of plaintiff and 1st defendant in favour of plaintiff bequeathing either municipal No.21-1-1119 to plaintiff and 21-1-1120 to 1st defendant or brother Narahari Rao are untrue and plaintiff is no way absolute owner of any of the premises and the will is fabricated and brought into existence. The other averments are the 3 brothers and their father were doing cloth business in the name and style of M/s. CN Brothers at the 2 shops since 1957 till 1997 or their father retired by then or there was a fresh partnership entered by taking the share of their father among the 3 brothers are not admitted and plaintiff is put to strict proof. It is a fact that their father Satyanarayana took 2 maligis from the original owner on rent and started business in cloth in 1957 as a family business with the 3 sons including plaintiff and 1st defendant and carrying on the business by the family headed by their father with assistance and later in 1978 said maligis were purchased with income from joint family business by their father in the name of their mother Annamma with some advice of well wishers and tax consultants. The 2 shops thereby are the joint family property and till 1997 their father was managing the entire cloth business and as his health was deteriorating he stopped coming to the shop and elder brother of them by name Narahari

Rao took over the management of the said business and with consultation of Chartered Accountants he used to create partnership and prepared tax returns, to protect the interest of all the members of the joint family. Their father was operated for hernia in 1985-1986 at Hyderabad Nursing Home and later all the 3 brothers separated in food and 1st defendant started residing in the 1st floor of the Barkatpura house and Narahari Rao their other brother who was managing joint family as Kartha of the family for last several years taking undue advantage, enriching himself and his wife and children by neglecting other family members including aged parents with mismanagement and started purchasing properties in his name and Narahari Rao started claiming that their mother executed a will dated 03.09.1977 in his favour for the premises No.21-1-1119 and in favour of plaintiff and 1st defendant for the premises No.21-1-1120 and the alleged wills were not made known to the other family members including after death of their parents and Narahari Rao filed R.C.No.188 of 2009 against plaintiff and 1st defendant for the premises 21-1-1119 as legatee under the alleged will and the RC was ended in dismissal and he preferred appeal stated pending and Narahari Rao almost kept the shop closed and empty making plaintiff and 1st defendant to sit idle without any stock and without contributing anything for the business and consequently plaintiff stopped coming to shop to run the business expressing inability since 2013 and 1st defendant by borrowing money from third parties to maintain the agehold business with name and fame of CN Brothers and to keep dignity of his father in the business society slowly started the business by investing his amounts and by taking assistance of his son 2nd

defendant and 3rd defendant has nothing to do with it being private employee, without any interference by plaintiff or Narahari Rao or others and the contra plaint averments are untrue and false and the alleged will is fabricated and forged one. The plaintiff is out of possession of 2 shops and not in possession and not entitled to injunction and plaintiff is went upon filing false cases.

6. It is pending suit plaintiff filed I.A.No.172 of 2015 for temporary injunction against the 3 defendants to restrain them from interfering with the plaint schedule property consisting of 2 shops with almost above averments of plaint and the counter of respondents is the selfsame in opposing the petition. It is pursuant to which after hearing both sides, the trial Court by impugned order dated 04.11.2015 granted temporary injunction pending disposal of the suit against defendants and their men from interfering with plaint schedule property (2 mulgies in ground floor and first floor area equivalent). The defendants/respondents aggrieved by injunction orders in I.A.No.172 of 2015, maintained CMA.No.88 of 2015 on the file of III Additional Chief Judge, and the lower appellate Court after hearing both sides passed the impugned reversal order dated 29.08.2016 vacating the temporary injunction setting aside the order granting injunction by allowing the appeal. It is impugning the same, the present revision is filed by the plaintiff against the 3 defendants.

7. Heard and perused the material on record.

8. In fact, there is caveat filed by the defendants and same was not read for fault of the Registry in not entering, consequently an exparte interim order in favour of the revision petitioner for not

to dispossess from the subject premises for two weeks while ordering notice returnable in two weeks for further hearing passed on 14.10.2016. The order for caveat pending has no sanctity without notice and hearing before its passing technically. In fact, this Court taken the revision for hearing for disposal on merits rather than influencing by that technicality, though if it is with the knowledge of caveat any suppression of the fact is made in obtaining the order that tantamounts to fraud, but for nothing demonstrated of conscious knowledge of service in compliance of the filing of the caveat of papers by registered post and despite service effected by suppressing it if any. Thus, this aspect now become academic, but for deciding the revision on merits from the respective contentions and from the material available on record.

9. From the pleadings the property stands in the name of the mother of the plaintiff, 1st defendant and Narahari Rao. According to the contest and from other brother pleadings and the pleadings of the plaintiff, it is their father while in occupation of the 2 shops/mulgies as a tenant for carrying joint family business since 1957, subsequently purchased from the business income of the plaintiff, 1st defendant and their other brother and their father, with that income the 2 shops and cause registered the sale deeds nominally in the name of their mother. It is a matter to be adjudicated ultimately in the main lis as to how far the Benami Transactions Prohibition Act that applies to it and if not whether the purchase is to be presumed for the benefit of the mother of the plaintiff, 1st defendant and Narahari Rao.

10. Further from the very plaint averments, when the 2 shops under the family business in use for carrying the cloth business of the family originally under the management of their father and after he retired from his old age, share of him was distributed among the 2 brothers of plaintiff and plaintiff by constituting another partnership under the management of the elder brother Narahari Rao. Coming to the subsequent pleadings of Narahari Rao started mismanaging and acquired properties from the income of said business carried in the 2 shops, in the name of him or his family members by swindling and ultimately abandoned with no stock and plaintiff and 1st defendant continued for sometime. What further alleged of plaintiff reposed confidence on 1st defendant in carrying the business and he failed to render accounts despite demands. The further averment is that as if the 1st defendant also walked out and plaintiff continued the business. Thus said different versions no way constitute from any of them even existence of any prima facie case or balance of convenience in favour of plaintiff much less non-granting injunction cause the plaintiff any irreparable injury, apart from there is no basis to set up any exclusive right of plaintiff over the property, unless the will and bequeaths to the claim is proved on full dressed trial. There is no any affidavit of any of the attestors of the will filed by plaintiff of its due execution satisfying the twin requirements of Section 63 of the Indian Succession Act, 1925; leave about rival contest regarding the bequeaths said to have been made by their mother for the shop 21-1-1119 in favour of plaintiff or 21-1-1120 in favour of 1st defendant and Narahari Rao or contest of Narahari Rao of one shop exclusively to him and the other to plaintiff and

1st defendant, that all also the matters to be decided only in full dressed trial from the factual foundation including as to the proof and genuineness of the bequeaths made by the so called testator under said wills with rival claims and title of the so called testator also, besides any of her sound and disposing state of mind and any suspicious circumstances surrendering the so called execution etc., to clear the cloud.

11. Having regard to above, the plaintiff is not entitled to exclusive right to get temporary injunction restraining the defendant Nos.1 to 3 or the other branch of their brother Narahari Rao. Thus, the lower appellate Court was right in reversing the trial Court's order of injunction by allowing the CMA dismissing the injunction application and for this Court while sitting in revision there is nothing to interfere.

12. Accordingly and in the result, the revision petition is dismissed with no costs. However, it is made clear that the suit for partition stated filed by sister of plaintiff, 1st defendant and Narahari Rao in O.S.No.152 of 2009 is pending on the file of the Chief Judge, City Civil Court, Hyderabad, including in relation to the 2 mulgies in question and there the plaintiff herein is one of the defendants apart from 1st defendant and Narahari Rao etc., and in a partition suit, it is left open to any of the defendants even to seek any remedy of not to alienate or not to middle with the property or not to cause any acts of waste, but for protecting the existing *status quo* and thereby without prejudice to such remedies available if any to work out.

Consequently, miscellaneous petitions, if any shall stand dismissed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.11.2016
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