

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice G.Shyam Prasad

–
Civil Miscellaneous Appeal No.598 of 2016

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Date: 10.08.2016

Between:

Alapati Ramesh

..Appellant

and

Dulipalla Amnantha Sravanthi and another

..Respondents

Counsel for the Appellant: Mr.Devalaraju Anil Kumar

**Counsel for respondent No.1: Mr.G.Vasanth
Rayudu**

for Mr.Pardhasaradhi

Katamaneni

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

At the interlocutory stage, the Civil
Miscellaneous Appeal (CMA) is disposed of with the
consent of the learned Counsel for the parties.

Respondent No.1 has filed OS.No.253 of 2016 on the file of the VIII Additional District and Sessions Judge, Krishna District at Vijayawada, for declaration that she is the absolute owner of the suit schedule property and also for perpetual injunction restraining the appellant and respondent No.2 from interfering with her peaceful possession and enjoyment of the suit schedule property. She has also filed IA.No.913 of 2016 for temporary injunction restraining the defendants from interfering with her peaceful possession of the suit schedule property and IA.No.912 of 2016 for *ad interim* temporary injunction restraining the appellant from creating encumbrances or third party interests or changing the nature of the suit schedule property during the pendency of the suit. On 27-07-2016, the lower Court has passed *ad interim* orders in both the IAs.

In IA.No.912 of 2016, a direction was issued not to alienate the suit schedule property. In IA.No.913 of 2016, an *ad interim* injunction was granted restraining the appellant and the persons claiming through him from interfering with the peaceful possession and enjoyment of the suit

schedule property by respondent No.1. Feeling aggrieved by the order in IA.No.913 of 2016, defendant No.2 filed this CMA.

It is the case of respondent No.1 that the appellant and respondent No.2, who are natural brothers, have colluded and created a General Power of Attorney (GPA) purported to have been executed by respondent No.1 in favour of respondent No.2 and an Agreement of Sale purportedly executed by respondent No.2 in favour of the appellant.

The lower Court *prima facie* opined that mere execution of the purported GPA by respondent No.1 in favour of respondent No.2 would not enable the latter to execute a sale deed in favour of the appellant. He has also placed reliance on the GPA-cum-Agreement of Sale, dated 29-11-2008, in recording his *prima facie* conclusion that possession was not delivered by respondent Nos.1 and 2.

At the hearing, the learned Counsel for the appellant submitted that having received the entire sale consideration, respondent No.1 has executed a possession handing over receipt signed on a stamp

on 30-11-2008 and that on the strength of the same, respondent No.2 has executed the sale deed and registered the same in favour of the appellant and also delivered the vacant possession of the suit schedule property.

Mr.G.Vasanth Rayudu, learned Counsel representing Mr.Pardhasaradhi Katamaneni, learned Counsel for respondent No.1, who appeared on caveat, submitted that the appellant and respondent No.2 have created false documents and that his client is still in physical possession of the suit schedule property.

The order assailed in this CMA being an *ex parte ad interim* injunction order, this Court would not like to record conclusive findings on the merits of the case. Ordinarily, a person aggrieved by the *ad interim* order is entitled to approach the Court, which granted the same, for vacating such order. This case, therefore, cannot be treated as an exception to this normal rule. However, the learned Counsel for the appellant expressed his serious apprehension that in the guise of the injunction order, respondent No.1, her family members and supporters are trying

to take forcible possession of the suit schedule property from the appellant, which submission is denied by the learned Counsel for respondent No.1.

In the light of the above submissions of the learned Counsel for the parties, while declining to interfere with the order of the lower Court, we, however, make it clear that the *ad interim* injunction order granted by the lower Court shall not be construed as enabling respondent No.1 to take forcible possession of the suit schedule property, if she was not in possession as on 27-07-2016, the date on which the *ad interim* injunction order was passed. If respondent No.1 indulges in taking such physical possession of the suit schedule property from the appellant, the latter shall be free to avail appropriate remedy before the lower Court for restoration of his possession. The appellant is entitled to file an application for vacating the interim order of injunction and if such an application is filed, the lower Court shall dispose of the same as expeditiously as possible.

Subject to the above observations and the liberty given to the appellant, the CMA stands

disposed of.

As a sequel to disposal of the CMA,
CMAMP.No.1230 of 2016, filed by the appellant for
interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

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(G.Shyam Prasad, J)

Dt: 10th August, 2016
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