THE HON'BLE SRI JUSTICE SANJAY KUMAR
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL MISCELLANEOUS APPEAL No.343 of 2016

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

The appellants are the plaintiffs in O.S.No.34 of 2014 on the file of the Additional District Judge, Hindupur. They filed the suit for declaring them as owners and possessors of the plaint schedule properties and for consequential injunction and also to declare the sale deeds executed by D.2 to D.4 in favour of D.5 to D.11 in respect of suit schedule properties as null, void and not binding on them. The suit schedule property comprises of four items namely Ac.18.40 cents in Sy.Nos.12-1, 12-2, 11-1 and 11-2; 2878 Sq.Yds. in Sy.Nos.352-2 and 352-3; 5429 Sq.Yds. in Sy.Nos.352-2 and 352-3; and Ac.3.00 in Sy.Nos.352-2 and 352-3 of S.Sadlapalli village, Hindupur municipality, Anantapur District.

2. Along with the suit, the appellants filed I.A.No.168 of 2014 under Order 39 Rules 1 and 2 C.P.C. for injunction pending disposal thereof. During the course of enquiry, on behalf of the appellants Exs.P.1 to P.15 were marked. Vide Order, dated 04.01.2016, the learned Additional District Judge held that in view of previous Judgment and decree in O.S.No.20 of 1989 the appellants are not entitled to any relief and consequently dismissed the application.

3. Aggrieved by the said dismissal, the appellants preferred the present C.M.A. and also CMA MP No.629 of 2016 for injunction pending disposal of the appeal. With the consent of both the parties, the main C.M.A. is being disposed of by this Judgment. During the course of hearing, on behalf of the appellants arguments of Sri O.Manohar Reddy, Senior Counsel for the

appellants/plaintiffs, and Sri C.V.Mohan Reddy, Senior Counsel for the respondents/defendants were heard.

4. The case of the appellants/plaintiffs is that the first respondent is a registered partnership firm of which the partners were 1) Siyaram Gupta, 2) Ramkumar Gupta, 3) Gowri Bai, 4) Parameswari Bai, 5) Satyanarayana Gupta, 6) Ghanshyam Das, and 7) Mahender Kumar Gupta. The partnership firm was a Sugar industry. Siyaram Gupta was managing the day-to-day affairs of the firm whereas Satyanarayana Gupta and Ghanshyam Das were looking after the process of manufacturing. Siyaram Gupta died on 14.01.2001, Ramkumar Gupta died on 23.12.2000 and Satyanarayana Gupta died on 23.12.2010. The appellants/plaintiffs are the legal heirs of the deceased named above.

5. The further case of the appellants is that the suit schedule lands were originally allotted by A.P.Industrial Infrastructure Corporation (A.P.I.I.C.) in the individual names of their ancestors but not to the first respondent firm. Having purchased the petition schedule lands from A.P.I.I.C. under four different sale deeds dated 03.12.1981/19.03.1982 and 07.06.1985, the purchasers who were partners of the first defendant firm have allowed their lands to be utilized for installation of machinery etc., for the purposes of the first defendant firm. At no point of time, the suit schedule lands were treated as the property of the firm. Sometime in the past, due to unfavourable conditions, the manufacturing process was stopped and all the machinery etc., from the suit schedule lands were removed and the land was left open. Even thereafter, except for Siyaram Gupta, no other individuals were authorized to act as a managing partner of the firm.

6. While the matter stood thus, according to the plaintiffs, D.2 to D.4, who have nothing to do with the partnership firm, representing themselves as the partners of D.1 firm, executed sale deeds on 12.10.2012 in favour of D.5 to D.11 in respect of the suit schedule lands. The sale deeds are null and void having been executed by incompetent persons. Therefore, the appellants/plaintiffs filed the suit for the relief stated supra.

7. On behalf of the contesting defendants, it is contended that the first respondent firm entered into an agreement of sale in respect of the schedule properties on 10.03.1986 together with stock-in-trade for a total consideration of Rs.10,25,005/- and out of that, a sum of Rs.8 lakhs was paid by way of Demand Draft. This agreement was in between the first defendant partnership firm and the fifth defendant partnership firm. Subsequently, the fifth defendant entered into an agreement of sale of the same property with D.6 to D.10. On 11.05.1986, since the first and fifth defendants have failed to execute the sale deed in favour of D.6 to D.10, they filed O.S.No.20 of 1989 on the file of the Additional District Judge, Hindupur, for specific performance of agreement of sale in respect of the suit schedule lands which are the subject matter of the present suit. That suit was keenly contested by the first defendant firm and others and the learned Additional District Judge, Hindupur, decreed the suit in favour of D.6 to D.10 herein granting the relief of specific performance. In pursuance thereto, the sale deeds were executed in favour of D.5 to D.10 on 12.10.2012. Aggrieved by the said Judgment in O.S.No.20 of 1989, an appeal bearing No.1985 of 2001 was filed which is however dismissed as withdrawn. Therefore, the Judgment and decree in O.S.No.20 of 1989 became final. It is contended by the defendants that the contentions that are now raised in the present suit were also raised in the previous suit and the documents which are now sought to be relied upon by

the plaintiffs were before the Court. The contentions which are now raised by the plaintiffs were specifically considered and rejected by the Court of competent jurisdiction in O.S.No.20 of 1989. Having suffered the decree, which became final, the plaintiffs with the dishonest intention have filed the present suit which is liable to be rejected in limini. According to the respondents, the Judgment and decree in O.S.No.20 of 1989 operates as *res judicata* and *estopes* the plaintiffs from reagitating the claim which was rejected.

8. We have carefully perused the material now placed before the Court and also the Judgment and decree in O.S.No.20 of 1989 dated 19.04.2001. It may be recalled that the specific contention of the plaintiffs is that the suit schedule lands were allotted to the individuals who incidentally happens to be the partners of the first defendant firm but not to the first defendant partnership firm. Therefore, the transaction that is said to have been entered into by the first defendant firm with the other defendants cannot be said to be a valid transaction. Upon carefully perusing the material on record, we have no hesitation in holding that the points that are now raised in the present suit are in paramateria with what was contended in the previous suit. The aspect as to whether the suit schedule lands were allotted to the partners of the first defendant firm in the individual capacity or was allotted to the partnership firm for the purpose of establishing a sugar industry was elaborately considered in para 26 of the Judgment in O.S.No.20 of 1989 while discussing issues 5, 6 and additional issues. It will be apt to reproduce the findings of the learned Additional District Judge on this aspect.

> "Firstly; whether the property belongs to the first defendant firm or individual partners.
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> In this connection, Exs.B.1 to B.4 were exhibited. They were marked subject to objection on the ground that they were not

public documents and not originals. But, I would like to observe that they being certified copies and the fifth defendant being one of the vendees under previous agreement, certainly, it cannot be said that he was incompetent to exhibit them and it need not be originals that alone are to be exhibited. Even it is suffice if they are certified copies and, therefore, that objection is withheld.

Coming to the contents therein, I would like to observe that, no doubt, certain names are mentioned therein as vendees, basing on which, the learned Counsel for the 5th and 6th defendants contends that the property sold thereunder was purchased in their individual capacity and not as partners of the firm on behalf of the firm, but, I would like to observe that it is not as though that the extents purchased thereunder, were purchased by the vendees in their individual capacity, as definite expression occurs to set that stand at naught. For better appreciation, I would like to extract relevant portion occurring in the description of parties as "first part" and "second part", which run thus:

> "This deed of sale made at Hyderabad this the seventh day of June, 1985 by the Andhra Pradesh Industrial Infrastructure Corporation Limited, a Government Company, registered under the Companies Act, 1956, having its registered office at 5-9-58-B, 6th Floor, Parisaramabhavan, Basheer Bagh, Hyderabad, 29, represented by its Law Officer (hereinafter called the party of the First part), which expression shall, unless the context otherwise requires include its successors and assigns in favour of (1) Siyaram Gupta, S/o.Sri Dayalal Gupta, aged 55 years, Occupation-Business, resident of Bangalor (Karnataka), (2) Sri Ramkumar Gupta, S/o.Sri Dayalal Gupta, aged 51 years, Occupation-Business, resident of Nindal (Haryana), (3) Sri Satyanarayana, S/o.late Sri Kashiram, aged 41 years, Occupation: business, resident of Akola, (4) Sri Mahendrakumar, S/o.Sri Ramkumar Gupta, aged 27 years, Occupation: business, resident of Jind (Haryana), and (5) Sri Shayam Bihari, S/o.Sri Ramkumar Gupta, aged 25 years, Occup:Business, resident of Jind (Haryana), carrying on business in Co.partnership under the name and style of

M/s.Sree Venkateswara Khandasari Sugar Factory, registered with the Registrar of Firms, Andhra Pradesh, Hyderabad, vide Registration No.1317/7.2.73 having its business at Rural Industrial Estate.S.Sadlapalli (hereinafter referred to as the party of the Second Part), which terms shall mean and includes unless the context otherwise requires each one of them, their heirs, executors, administrators and assigns, jointly and severally, represented by its Managing Partners Sri Siyaram Gupta, who is duly authorized to do so through partnership deed dated 19.04.1982. Power of Attorney dated 01.07.1982."

These recitals are identical in Exs.B.1 to B.4. The very phraseology and Language employed in describing "Part II", would unmistakably reflects that the allottee was the first defendant firm, but not the individual partners. Further, I would also like to obseve that if the individual partners were really intended to be the purchasers in their own capacity, there was no need at all to refer to "M/s.Khandasari Sugar Factory, represented by Siyaram Gupta:, describing it as "Co-partnership" in Exs.B.1 to B.4. This apart, the fact that the stamp papers used to write the original sale deeds were purchased for "Sri Venkateswara Khandasari Sugar Factory, Hindur, S.Sadlapalli by one Gundu Rao, S/o.Appa Rao on 11.03.1985 from Sub-Registrar. The purchase date of stamp papers for all four sale deeds would further strongly prove that it was the first defendant firm, which was the purchaser of entire extent as allottee from A.P.Industrial Infrastructure Corporation Limited, but not its partners in their individual capacity."

9. In view of the above categoric findings, the issue that is now sought to be agitated is no more *resintegra.* The plaintiffs 2 to 7 who are the legal representatives of the persons who suffered the decree in O.S.No.20 of 1989 cannot be allowed to reagitate the contentions which are raised by their predecessors and rejected. They cannot even be heard saying that since they are not parties to the previous suit, the decree therein is not binding on them. The sale deeds that are now sought to be declared as null, void and

not binding on the plaintiffs is in pursuance to the Judgment in O.S.No.20 of 1989 after it became final. Therefore, it is not open to the plaintiffs to challenge the validity of the said sale deeds on any grounds. That apart, the issues that are raised by the plaintiffs are contentious which needs to be considered only after full pledged trial in the suit. For the purpose of considering the *prima facie* case for the purpose of granting interim injunction pending disposal of the suit suffice it to say that the defendants are *prima facie* the rightful owners of the suit schedule lands having purchased the same under registered sale deeds on 12.10.2012 and they are put in possession in pursuance thereto. The plaintiffs who claimed to be in possession of the suit schedule lands have filed no documents, whatsoever, for holding that when the suit was filed in August, 2014, the suit schedule lands were in their possession. It may be recalled that the suit lands of the present suit were the subject matter of the previous suit and the present suit is filed thirteen years after the previous suit has been decreed against the predecessors-in-title of the plaintiffs. That part, the plaintiffs did not also file any document to show the rights and liabilities and the constitution of the first defendant partnership firm. In order to obtain injunction pending disposal of the suit, it is incumbent on the part of the plaintiffs to show their *prima facie* possession and also establish that the balance of convenience lies in their favour and if injunction is not granted, they would suffer irreparable loss which cannot be compensated. The appellants/plaintiffs could neither show their *prima facie* possession nor balance of convenience in their favour so as to grant injunction pending disposal of the suit.

10. Learned Additional District Judge though having discussed the matter in a most unsatisfactory manner dismissed the application, but after considering the material on record, we are of the opinion that the petitioners

are not entitled to the injunction as prayed for. There are no merits in the appeal and the same is liable to be dismissed. Needless to say that the learned Additional District Judge is directed to dispose of the main suit expeditiously without being in any way influenced by the observations made herein above.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

SANJAY KUMAR,J

M.S.K.JAISWAL,J

Date: 30.12.2016
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