

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Miscellaneous Appeal No.940 of 2016

JUDGMENT:

This civil miscellaneous appeal under Order LXIII Rule 1 of the Code of Civil Procedure, 1908, ('the Code', for brevity) by the respondents-defendants is directed against the order, dated 09.09.2016, of the learned V Additional District Judge, Bhongir, Nalgonda District, passed in IA.no.13 of 2015 in OS.no.27 of 2015 filed by the petitioner-plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code for grant of a temporary injunction restraining the respondents-defendants 1 to 4 from alienating or mortgaging the petition/plaint 'A' & 'B' schedules in favour of any third parties or creating charge over the same, pending disposal of the suit.

I have heard the submissions of Sri P. Kiran, learned counsel for the appellants-defendants ('the defendants', for brevity) and of Sri B. Mohan, learned counsel for the respondent-plaintiff ('the plaintiff', for brevity). I have perused the material record.

At the hearing, learned counsel for both the sides would bring to the notice of the Court that though both the sides filed their respective documents in support of their respective contentions before the trial Court, the trial Court, by observing that no documents are filed, disposed of the application without giving an opportunity to the parties to exhibit their documents and advance arguments on the basis of the documents and that therefore the order passed is unsustainable in view of the settled legal position and also Rule 60 of the Civil Rules of Practice, 1980, which ordains that the enquiry into an interlocutory application shall be conducted by receiving affidavits, but if the Judge directs that the evidence be given orally, then it shall be recorded and the exhibits be marked in the same manner as in the case of suits.

Be it noted that as no documents were exhibited on either side at the time of hearing of the interlocutory application before the trial Court, the contents of the documents of the parties were not adverted to and not considered by the Court below. When an Interlocutory Application is filed for a temporary injunction in regard to immovable property, the Court has to necessarily look into the documents of both the parties and examine the contents thereof to find out as to whether the pleadings find support from the recitals in the respective documents. In fact, no just decision as regards the property in dispute can be made without looking into the documentary evidence that may be relied upon by both the parties. In the light of the contentions urged by both the parties, it is necessary to refer to and carefully examine the recitals in the documents before coming to a just decision in the matter. The trial Court ought to have allowed the parties to have their documents exhibited before disposing of the petition for temporary injunction on merits. Even in a case where the parties failed to make a request to exhibit their documents for consideration in the interlocutory application, it is the duty of the Court to see that the necessary documents are exhibited. The case on hand is not a case where the parties specifically opted not to exhibit the documents for one reason or the other. This Court in *A.P. Minerals Development Corporation Limited Hyderabad v. M/s. Trimex Minerals Pvt. Ltd.*,¹ and *Bhopal Reddy and another v. K. Lakshmi Bai and another*² held that the practice of marking the documents in the interlocutory application only shall be continued. It is thus obvious that the documents filed by either of the parties shall have to be marked, unless the parties specifically opt for not marking either on the ground of inadmissibility or for some other reasons of their own.

Further, a perusal of the order of the trial Court would show that the trial Court simply observed that both the parties are claiming that they are in

¹ 1998(1) ALT 182

² 1998(1) ALD 770

possession of the property and that unless and until the parties enter trial the Court cannot come to conclusion and that if an interim order is granted in favour of the plaintiff no prejudice would be caused to the defendants, and disposed of the application without assigning any reasons, much less valid reasons, for granting the interim order in favour of the plaintiff.

Therefore, the aggrieved defendants having preferred this appeal would submit that the matter may be remitted to the trial Court for fresh disposal in strict accordance with the procedure established by law.

Learned counsel for the plaintiff while endorsing the said view would further submit that the present injunction order, which is assailed is with regard to not to alienate the property, and that the said order may be maintained till the trial Court disposes of the interlocutory application afresh as may be directed by this Court.

Having regard to the submissions and the reasons assigned supra, this Court finds that it is just and proper to allow the appeal and remand the matter to the trial Court for disposal of the IA on merits, after following the procedure established by law.

In the result, the Civil Miscellaneous Appeal is allowed and the order impugned is set aside. As a sequel, IA.no.13 of 2015 in OS.no.27 of 2015 is remitted to the trial court with a direction to give an opportunity to both the parties to exhibit their respective documents and hear and dispose of the interlocutory application afresh in strict accordance with the procedure established by law as expeditiously as possible and preferably by 31.01.2017. In view of the fair concession made, the interim order not to alienate the property etcetera, which is granted by the trial Court, shall be in force till 31.01.2017 or the date of disposal of the afore-said IA by the trial Court, whichever is earlier.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

16th December, 2016
VjI

