

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

CIVIL MISCELLANEOUS APPEAL No.995 of 2016

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

This appeal under Order 43 Rule 1 CPC is filed by the appellant/petitioner/plaintiff aggrieved by the dated 31.10.2016 passed by the learned VI Additional District Judge, Kakinada, in I.A.No.353 of 2016 in O.S.No.99 of 2016. By the said order, the trial Court declined to grant interim injunction in favour of the petitioner.

Heard Sri P.Rajasekhar, learned counsel for the appellant/plaintiff, and Sri G.Rama Gopal, learned counsel for the respondents/defendants.

Perusal of the order under appeal reflects that no oral evidence was adduced but documentary evidence was placed on record by both sides. Exs.P1 to P14 were marked by the appellant/plaintiff, while Exs.R1 to R5 were marked by the respondents/defendants.

The parties are hereinafter referred to as "petitioner" and "respondents".

The contention of the petitioner is that he purchased a total extent of 650 square yards of land in Sy.No.232/2 situated at Gudarigunta village of Kakinada from out of the total extent of 1.74 gts. Exs.P1 and P2 are registered sale deeds dated 16.07.2008, which are in support of the contention of the petitioner. Further more, subsequently, under Ex.P3, the petitioner purchased 125 square yards of land under registered sale deed dated 18.02.1988 from Koppula Prabhakara Reddy (3rd respondent). The suit schedule property is described as the property bearing Door No.3-17-25A. According to the petitioner, the respondents under registered sale deeds dated 22.02.1980 purchased Ac.1.74 cents, equivalent to 8421.6 square

yards and thereafter, sold away the entire land to different people and had no land whatsoever therein. Having obtained permanent injunction in O.S.No.145/2011 on the file of the II Additional Junior Civil Judge, Kakinada, the respondents are trying to interfere with the possession of the petitioner over the suit schedule land and hence he filed suit for declaration of his title and perpetual injunction and pending disposal thereof *ad interim injunction*.

On the other hand, the contention of the respondents is that respondents 1 to 3 along with one Kolluboiyana Atchiraju have purchased Ac.1.74 cents of land on 22.02.1980 and the suit schedule land in the present suit is part and parcel thereof. Kolluboiyana Atchiraju and respondents Nos.2 & 3 had relinquished their shares on 05.03.2013 in favour of respondent No.1 and hence respondent No.1 became the absolute owner and possessor of the entire land admeasuring Ac.1.74 cents, part of which is the suit schedule land herein. It is their further contention that subsequently the respondents sold some part of their land, but still they are in possession of 3000 square yards. When the petitioner and his vendors tried to interfere with the possession of the respondents, they filed O.S.No.145/2011 on the file of the II Additional Junior Civil Judge, Kakinada, and on 28.03.2011 the learned II Additional Junior Civil Judge granted temporary injunction in their favour, restraining the petitioner herein who was arrayed as 8th defendant/8th respondent in that suit from interfering with the possession of the respondents. In O.S.No.145/2011 the petitioner herein was arrayed as the 8th defendant and he contested the suit by producing the oral and documentary evidence. The learned II Additional Junior Civil Judge, Kakinada by judgment and decree dated 05.05.2016 decreed the suit restraining the petitioner herein and others from interfering with the possession of the respondents in so far as the suit schedule land is concerned. However, in so far as another bit, admeasuring

125 square yards is concerned, which the petitioner purchased subsequently from the 3rd respondent, the respondents have no claim whatsoever. It is submitted by the respondents that the contentions which are now raised by the petitioner herein were all raised in the suit O.S.No.145/2011 and the trial court after having thoroughly discussing the entire material on record, held that though the petitioner is entitled to 125 square yards of land with which the respondents have no claim, the petitioner and others cannot interfere with the possession of the remaining land which is part and parcel of the suit schedule land. After having suffered the decree of injunction in respect of the self-same land, the petitioner has preferred the present suit even without obtaining certified copy of the judgment and decree in that suit and is trying to obtain injunction which will be contrary to the injunction already granted in favour of the respondents in O.S.No.145/2011. Instead of availing the remedies available to the petitioner herein, the petitioner filed this suit and is trying to obtain injunction which cannot be countenanced.

If aggrieved by the judgment and decree in O.S.No.145/2011, in which the petitioner herein was a party and the suit schedule land was part and parcel thereof, the contention of the respondents is that the petitioner ought to have preferred the appeal which in fact he did file subsequently, but his filing the suit for declaration and injunction cannot be allowed. At best, if so advised, the petitioner can sustain a suit for declaration of his title and recovery of possession of the suit schedule land, since a court of competent jurisdiction, vide judgment dated 28.03.2011, has already decreed the suit i.e., O.S.No.145/2011 against the petitioner herein and in favour of the respondents granting perpetual injunction.

According to the petitioner, in the suit survey number Ac.0.36 cents belong to M.V.Sastry and the said M.V.Sastry gifted the said Ac.0.36 cents of

land in favour of 5 persons, who belong to Settibalija community, and the said persons have filled the tank and made it into two plots. This was happened about 30 years back. It is further contended by the petitioner that the said 5 persons have sold the land in favour of the vendors of the petitioner and thereafter, the petitioner purchased two plots, admeasuring 350 and 300 sq.yards each in Sy.No.233/2. This contention of the petitioner is denied by the respondents. It is noticed from the record that no satisfactory evidence was produced by the petitioner to show that the said M.V.Sastry had Ac.0.36 cents of land which he gifted in favour of Settibalija community people and that land was converted into plots and transactions took place in connection thereto.

(contd....)



The petitioner/plaintiff herein was the 8th defendant and he was one of the main contesting party in O.S.No.145/2011 on the file of the II Additional Junior Civil Judge, Kakinada. The contention of the respondents is that the suit schedule property in the present suit is part and parcel of the suit schedule property in O.S.No.145/2011. According to the petitioner, the suit schedule property herein is distinct and different from that of the suit schedule property in O.S.No.145/2011. For the sake of convenience the schedule of properties as described in the present suit as well as in O.S.No.145/2011 is reproduced hereunder:

Plaint schedule in O.S.No.67/2016

East Godavari District, Kakinada Sub-Registry, Urban Mandal, Gudarigunta, H/o.Suryaraopeta, Kakinada Ward No.6, Block No.3, Zeroyati Dry S.No.233/2, 350 + 300 = 650 sq.yards of vacant site northern side in Ac.0.36 cents out of Ac.2.10 cents within the following boundaries covered by two registered sale deeds, dated 16.07.2008 making single plot, bearing D.No.3-17-25A within the following boundaries:

East : Vacant site of plaintiff 68'.4"
South : Land of Gorla Veerraju 97'.4"
West : Municipal Road 73'
North : Road 70'
With all fruit bearing trees, thatched hut, electricity connections

Plaint schedule in O.S.No.145/2011:

East Godavari District, Kakinada Sub-Registry, Kakinada Mandal, Kakinada Municipal Corporation, Sy.No.233/2, Gudarigunta, Vacant site of 1900 sq.yards, situated within the following boundaries:

East : 203 feet property of Vasamsetti Nagamma, some extent and Chintadi Satyavathi sold by the plaintiffs
South : 108 feet property of plaintiffs
West : 203 feet Road
North : 60 feet Road formed by the plaintiffs
The property situated within the above boundaries with all kinds of easementary rights etc.

After full fledged trial, O.S.No.145/2011 has been decreed in favour of respondent No.1 and against the petitioner herein and other persons. An extent of 125 square yards of land which the petitioner purchased from the 3rd respondent under Ex.P3 has got nothing to do with the respondents and

that altogether is a separate and distinct property. The respondents do not lay any claim and not denied that in an extent of 125 square yards of land covered by Ex.P3 purchased by the petitioner from respondent No.3, the petitioner has erected a shed and he has been in possession thereof.

A perusal of both the plaints in the present suit and in O.S.No.145/2011 and the schedules appended thereto show that there is slight difference and distinction between two schedules. O.S.No.145/2011 was filed in respect of an extent of 1900 square yards and the present suit is filed in respect of 650 square yards, but naturally all the boundaries will not be one and the same.

To come to a prima facie conclusion as to whether the suit land in the present suit is part and parcel of O.S.No.145/2011, a perusal of the plaint in the present case needs to be seen. In paragraph No.8 of the plaint, the petitioner herein after referring to the previous suit O.S.No.145/2011, alleged that taking advantage of the illiteracy and innocence of the plaintiff, who is not a worldly-wise man, with an intention to grab the valuable property of the plaintiff, the defendants filed O.S.No.145/2011 for injunction. It is further contended that the defendants are claiming property to the west of property covered by registered sale deed in between the plaintiff and the 3rd defendant, which is for an extent of 125 square yards. It is also averred in the plaint that the plaintiff who is arrayed as defendant No.8 in O.S.No.145/2011, contested the said suit, and that the court below without properly considering the material on record, decreed the suit against the petitioner herein, for which he preferred an appeal.

If the averments made in paragraph No.8 of the plaint are taken into consideration, there is no doubt that the suit schedule property in the present suit is part and parcel and also the subject matter of O.S.No.145/2011, and

the contentions which are now advanced by the plaintiff were also raised in O.S.No.145/2011. The petitioner/plaintiff herein examined himself as DW3 and also examined DWs 4 and 5 in support of his case in O.S.No.145/2011. The oral and documentary evidence adduced by the plaintiff in O.S.No.145/2011 was extensively discussed, and the same documentary evidence was produced in the present suit. The contentions advanced by the plaintiff in O.S.No.145/2011 were rejected. The evidence of the witnesses that were examined on behalf of the plaintiff as DWs 4 and 5 was not helpful to the petitioner/plaintiff, as evident from the judgment in O.S.No.145/2011. The witnesses examined on behalf of the petitioner/plaintiff herein in O.S.No.145/2011 admitted that the petitioner/plaintiff herein was residing at some other place and he was only storing his hayricks in the disputed site, that he has erected a shed for storing the hayricks in the property i.e., in 125 square yards which he purchased from defendant No.3. As already stated, there is no oral claim by the plaintiff herein that he is in possession of 125 square yards of land which he purchased under Ex.P3 from defendant No.3. The trial court in O.S.No.145/2011 has recorded a conclusive finding that the plaintiff herein is not in possession of the land which he claims to have purchased under registered sale deeds, reliance upon which he placed in the present suit and it is the defendants herein who are in possession thereof.

Though the findings in O.S.No.145/2011 are subject matter in the appeal, but however, for determining prima facie case for grant of injunction pending disposal of the suit, the same can certainly be looked into. When a competent court of jurisdiction after extensive enquiry and trial holds that the plaintiff herein is not in possession of the property which he is now claiming, he cannot once again heard saying that he is in possession of the same

property and *ad interim injunction* pending disposal of the suit may be granted.

In view of the above, we are of the opinion that having suffered with the decree of permanent injunction in respect of the self-same land and pending disposal of his appeal, he cannot file a fresh suit for injunction which will be contrary to the findings in the previous suit i.e. O.S.No.145/2011, which is subject matter of the appeal. It is needless to say that it is always open to the petitioner/plaintiff to file a suit for declaration of his title and recovery of possession, if he is so advised, and if he has got any claim over the suit land.

In the result, the civil miscellaneous appeal is dismissed.

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



SANJAY KUMAR,J

M.S.K.JAI SWAL,J

Date: 23.12.2016
Dsr