

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

C.M.A.Nos. 265, 266 AND 267 OF 2016

DATED 08TH SEPTEMBER, 2016

C.M.A.No. 265 OF 2016

Between:

A.Apparao and others

...

Appellants

AND

A.Demudu and others

...

Respondents

Counsel for the appellants

:

Sri E.V.V.S.Ravi Kumar

Counsel for respondent Nos. 1 to 8, 11 & 12

:

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Counsel for respondent Nos. 9 & 10

:

Sri P.Durga Prasad



THE COURT MADE THE FOLLOWING

COMMON JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These civil miscellaneous appeals arise out of common order dated 08-03-2016 in I.A.Nos. 57, 58 and 12 of 2016 in O.S.No. 3 of 2016 on the file of the Court of Special Judge for trial of cases under S.Cs. & S.Ts. (P.O.A.) Act – cum – Additional District and Sessions Judge, Vizianagaram (for short, 'the lower Court').

2. The appellants filed I.A.No. 12 of 2016 for *interim* injunction restraining respondent Nos. 9 and 10 from changing the physical features or from removing the existing mango trees situated in lot Nos. 1 and 2 of the suit schedule land pending disposal of the suit. An *ad interim status quo* order was granted by the lower Court. Seeking vacation of the said order, respondent Nos. 9 and 10 filed I.A.Nos. 57 and 58 of 2016 respectively. It needs to be noted at this stage that though the appellants filed I.A.No. 11 of 2016 also for restraining all the respondents including respondent Nos. 9 and 10 from alienating the suit schedule properties and the said I.A. has not been shown as being disposed of in the order, in the concluding portion of the order, the lower Court has dismissed the said I.A. also to the extent it was filed against respondent Nos. 9 and 10.

3. It is the pleaded case of the appellants in the suit that the properties belong to late Appalakonda, husband of defendant No. 5, and that without informing the plaintiffs, their fathers and other members of the coparcenary have entered into transactions with respondent Nos. 9 and 10 in respect of lot Nos. 1 and 2 of the suit schedule properties admeasuring Ac. 24.90 cents and Ac. 3.75 cents respectively. They have further pleaded that if, during the pendency of the suit, respondent Nos. 9 and 10 sell away the properties by dividing them into plots, in the event of their success in the suit, they will not be able to realize the fruits of the decree.

4. In the counter affidavits filed by respondent Nos. 9 and 10, they have *inter alia* pleaded that in pursuance of an oral partition, item Nos. 1 and 2 fell to the shares of respondent Nos. 1 to 8 and that out of Ac. 24.40 cents in lot No. 1, defendant No. 9 has purchased Ac. 10.70 cents by paying valuable consideration under registered sale deed and respondent No. 10 has entered into development agreement with some of the respondents for Ac. 10.70 cents of the land besides purchasing the remaining Ac. 3.00 cents through Sale – cum – General Power of Attorney. It is their further case that out of Ac. 56.25 cents in lot No. 2, Ac. 52.14 cents were purchased by respondent No. 9 for valuable consideration in the year 2009 itself and that after the property was converted into plots, a final layout was sanctioned in the year 2011 and respondent Nos. 9 and 10 have entered into sale transactions with third parties for sale of the plots. They have further pleaded that in respect of the part of the property, they have executed gift deed in favour of Grampanchayat concerned as per the layout regulations and that if any injunction is granted, that would cause irreparable injury to their interests.

5. On a thorough consideration of the documents produced by the parties, the lower Court has vacated the order of *status quo* granted by it and declined to grant injunction against respondent Nos. 9 and 10 against alienation. Sri Vedula Srinivas, learned counsel for the appellants, strenuously submitted that if his clients succeed in the suit, they will be entitled to 1/6th share and that if the property is sold by respondent Nos. 9 and 10 in the meantime, his clients will not be in a position to realize the fruits of the decree.

6. From the admitted facts of the case, it is clear that respondent Nos. 9 and 10 are not concerned with lot No. 3 comprising about half acre of land. Though the alienations were made and development agreement was entered into by the

family members of the appellants in the year 2009, property was developed between 2009 and 2011 in pursuance of such alienations and layout was sanctioned in the year 2011, for the reasons best known to them, the appellants have failed to approach the Court till the year 2016. Even if the properties purchased by respondent No. 9 and those in respect of which development agreement was entered into with respondent No. 10 are excluded, still substantial properties are left to protect the interests of the plaintiffs-appellants in the event of their success in the suit. Respondent Nos. 9 and 10, being the *bona fide* purchaser/developer, will be put to irreparable injury if they are prevented from alienating/developing the property. Therefore, the Court below has properly weighed the elements of *prima facie* case, balance of convenience and irreparable injury and declined to grant the *interim* reliefs in favour of the appellants. Therefore, we do not find any reason to interfere with the order of the lower Court.

6. The civil miscellaneous appeals are, accordingly, dismissed.

7. As a sequel to dismissal of the civil miscellaneous appeals, C.M.A.M.P.Nos. 512, 513 and 514 of 2016 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD, J.

Date: 08-09-2016.

JSK