

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.579 OF 2015

Dated 1-7-2016

Between:

Aileni Laxman Rao and another.

_____.Appellants.

And:

_____Bommakanti Jalandar and others.

_____.Respondents.

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JUDGMENT:

This appeal is preferred against order dated 7-5-2015 in I.A.No.211 of 2015 in O.S.No.9 of 2015 on the file of II Additional District Judge, Karimnagar, at Jagtial.

Appellants herein are plaintiffs in the above referred O.S.No.9 of 2015. They filed suit for permanent injunction to restrain the defendants, their agents and men from interfering with their peaceful possession and enjoyment of suit property. They contended that they are owners of open land in an extent of Ac.12 ½ guntas under S.No.341 of Dharoor village of Jagtial Mandal having purchased the same under registered document dated 15-7-2005. They contended that they recently constructed temporary shed in the suit land and defendants who have no right have been trying to interfere with their possession and on 3-3-2015, the defendants along with their agents and anti social elements came to the suit land and threatened them and made an attempt to trespass into the land. Plaintiffs with the help of well wishers, resisted the attempt of defendants and unless they are prohibited by way of injunction, it is difficult for the plaintiffs to protect their possession. Plaintiffs filed I.A.No.211 of 2015 seeking temporary injunction and in the affidavit filed in support of

the petition, the plaint averments referred to above are reiterated.

Respondents filed counter disputing affidavit averments of the petitioner and according to defendants, suit is a speculative suit to knock away property in S.No.340/A ('Aa' in Telugu) of Dharoor village showing wrong survey number and wrong schedule. They contended that the boundaries shown in the plaint and boundaries mentioned in the registered document in favour of plaintiffs are different and plaintiffs are making attempt to trespass into the land of defendants by virtue of the suit. They contended that the first defendant erected shed and fixed a big stone pillars around 0-12 guntas of land and the contention of plaintiffs in that regard is incorrect. It is further contended that as first respondent intended to construct a house, an application was submitted to grampanchayat on 2-2-2015 and as per oral advise of panchayat Secretary construction was commenced and subsequently secretary granted permission on 20-3-2015 by collecting necessary fee and due to insufficient funds only, stone pillars were erected around 0-12 guntas of land and claim of plaintiffs is untenable.

Considering the contentions and rival contentions of both parties with reference to documents relied on by them trial court held that plaintiffs failed to make out prima facie case and balance of convenience and thereby dismissed the interim application. Aggrieved by the same, present appeal is preferred.

Heard both sides.

Advocate for appellants submitted that plaintiffs purchased the suit property under a registered document in the year 2005 and since then they have been in possession and enjoyment of the property which is evident from pahanies. He further submitted that the court below failed to draw presumption that possession follows

title and ignored the sale deed in favour of plaintiffs. He further submitted that findings of court below are contrary to the documentary evidence and therefore, the order of court below is liable to be set aside.

On the other hand, advocate for respondents submitted that boundaries referred in the plaint are different from the boundaries that are recorded in the sale deeds relied on by plaintiffs and taking this aspect into consideration, trial court recorded a finding that plaintiffs failed to make out any case and rightly refused injunction. He further submitted that survey number referred to in the document is incorrect and the contentions raised on behalf of appellants with regard to division of survey number, there is no pleading and no evidence and trial court rightly dismissed application and that there are no grounds to interfere.

Now the point that would arise for my consideration in this appeal is whether the order of court below is legal, correct and proper?

POINT:

It is the specific case of appellants that they are owners of 12 ½ guntas of land in S.No.341 having purchased from Duvvasi Sudarshan in the year 2005. It is for appellants to establish their prima facie case and balance of convenience besides irreparable loss in order to get relief of temporary injunction. Plaintiffs mainly relied on Ex.A.2 sale deed to show their prima facie case. Admittedly, Ex.A.3 is link document for Ex.A.2 and the boundaries referred to in these two documents does not match with the boundaries mentioned for the suit property. Even pahani patrikas, relied on by appellants are in respect of survey number 341/D whereas the document is in respect of survey number 341. Though it is contended that there is a division of this survey number no such plea is taken in the plaint and no material is placed at least to show prima facie that there was

sub-division. Trial court specifically recorded a finding that names of petitioners were not found in Exs.A.4 and A.6 pahani patrikas and held that plaintiffs suppressed the material facts and approached the court with uncleaned hands. As already referred to above, the suit itself is filed for permanent injunction and granting temporary injunction would almost amount to decreeing the suit, for which case, there must be a very strong prima facie case in favour of plaintiffs. In other words, only if court is satisfied that there is every likelihood of decreeing the suit on the basis of material produced on behalf of plaintiffs then only interim injunction can be granted particularly when the main relief is also for the same. But here, boundaries in the document are not tallied with the boundaries that are referred in the plaint and no explanation is offered by the plaintiffs for this discrepancy. All the contentions raised with regard to sub-division etc., is a matter of evidence which can be decided only during trial. When there is no prima facie material supporting the version of plaintiffs, the court below was right in refusing injunction and I do not find any wrong in the order of the court below.

For these reasons, I am of the view that appeal is devoid of merits and liable to be dismissed.

Accordingly, appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 1-7-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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