

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.763 of 2014

JUDGMENT:

This appeal is preferred challenging order dated 31.05.2014 in I.A.No.1369 of 2011 in O.S.No.282 of 2011 on the file of I Additional District Judge, Nellore.

2. Appellant herein is plaintiff who filed O.S.No.282 of 2011 on the file of I Additional District Judge, Nellore for the relief of declaration that he is the absolute owner of suit schedule property and consequential permanent injunction restraining defendants, their men and agents from encroaching into the road situated on the northern side of plaintiff's house and making constructions therein. In the said suit, plaintiff filed I.A.No.1369 of 2011 seeking temporary injunction pending disposal of the suit. Respondents filed counter disputing the claim of plaintiff for the relief of interim injunction and the trial Court on a consideration of documents marked on behalf of respondents herein as Exs.B1 to B7, dismissed the interim application and vacated the *status-quo* order which was granted earlier. Aggrieved by the same, present appeal is preferred.

3. Heard arguments.

4. According to appellant, Court below failed to see that petitioner is in actual possession and enjoyment of plaint schedule property and respondents were never in possession of it. It is further contended that the trial Court ought to have extended the *status quo* till finalization of the suit and the order of trial Court is erroneous and liable to be set aside.

5. On the other hand it is the contention of respondents that petitioner sold the property to respondents No.2 to 4 under the original of Ex.B2 document and delivered possession and subsequently respondents No.2 to 4 sold the same to respondent No.1 under the original of Ex.B5 and the names of these persons are entered into revenue records as enjoyers of the land and that the claim of plaintiff is not at all tenable.

6. Now the point that would arise for my consideration is:

Whether the order of Court below is legal, proper and correct?

POINT:

8. I have perused the material papers filed along with appeal and also the impugned order dated 31.05.2014. As seen from the record, appellant herein claimed the property on the basis of Hibbanama said to have been executed by his daughters on 20.02.2009, whereas respondents claim that they have purchased the property under original of Ex.B2 and Ex.B5 documents. Learned trial judge considering the contentions and rival contentions of both parties, held that petitioner failed to make out *prima facie* case in support of his claim over the suit schedule property. According to the plaint averments, appellant claims that he is the absolute owner of suit schedule property having acquired the same under Hibbanama dated 20.02.2009 executed by Shaik Rahamat bi and Shaik Shara Bhanu in his favour and he has not produced any evidence at least *prima facie* in support of acquisition by way of Hibbanama dated 20.02.2009 executed by Shaik Rahamat bi and Shaik Shara Bhanu. Considering the same, trial Court held that, as petitioner has not made out any *prima facie* case, *status-quo* order that was granted on ex parte basis on 11.10.2011 was vacated. I do not find any wrong in the approach

of trial Court nor any illegality in the order vacating *status quo*. When plaintiff approached the Court with a specific case, it is for him to prove his case with sufficient material. In a case of temporary injunction, the burden is on the person seeking temporary injunction to make out *prima facie* case and balance of convenience, so also establish irreparable loss. But appellant neither made out *prima facie* case nor shown any balance of convenience, leave alone, irreparable loss in support of his claim for temporary injunction. Trial court rightly appreciated the material on record and came to a right conclusion and there are absolutely no grounds to interfere with the order dated 31.05.2014 and that appeal is devoid of merits and liable to be dismissed.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 22-02-2016.

gvl