

THE HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.975 OF 2015

JUDGMENT:

This appeal is preferred questioning the docket order dated 04.11.2015. The Court below passed the following docket order:

“Heard the counsel for petitioner. No representation on behalf of respondents even till 4.00 p.m. For hearing the arguments on behalf of respondents call on 19-11-2015. Meanwhile parties are directing the maintain status quo till 19-11-2015.”

The suit in O.S.No.470 of 2015 is filed for partition and in that suit I.A.No.743 of 2015 is filed. In the suit, the present appellant is shown as 10th defendant. As per affidavit filed in support of the petition, it is contended that father of deponent is absolute owner and possessor of the petition schedule properties and respondents 2, 3 and 5 are sons of first defendant i.e. first respondent and the petition schedule properties are the ancestral-cum-joint family properties and that no partition took place between herself and her brothers and their legal heirs till this date and she being the daughter of late Shanker Lal Rathi is entitled for 1/3rd share in the petition schedule properties. She further stated that she came to know that her brother Ramdev Rathi filed eviction petition in R.C.No.308 of 2005 seeking eviction of 11th respondent. She further stated that respondents 2, 3 and 5 used to manage the schedule properties and leased out the same to respondents 11 and 12 and when she approached District Registrar for obtaining Encumbrance Certificate and valuation certificates, she came to know that her brother Badhri Vishal Rathi executed gift deed in favour of R.9 and R.9 in turn executed sale deed in favour of R.10 with a malafide intention to avoid share to her and to cause wrongful

loss and that respondents 9 and 10 i.e. defendants 9 and 10 have no right, title, interest or possession over the petition schedule property and as she is not a party to the transactions of gift and sale, they are not binding on her and said alienations cannot confer any exclusive rights, title or interest on 9th and 10th defendants.

She further stated that her brother Ramdev filed eviction petition against 11th respondent in respect of 'B' schedule property without disclosing true facts and suppressing real facts and the eviction order is passed by II Additional Rent Controller, Hyderabad, in respect of 'B' schedule property. She stated that respondents 1 to 10 with ulterior motive trying to cause loss to her and trying to alienate petition schedule property for illegal enrichment and if they succeed in their attempts, she would suffer irreparable loss and that *prima facie* case and balance of convenience are in her favour.

For this affidavit, no counter is filed on behalf of respondents 1 to 12 shown in the interlocutory application.

The Court below having waited till 4.00 p.m. on 04.11.2015 and as no counter is filed, after hearing the arguments of the advocate for the petitioner in the interlocutory application granted order of *status quo* directing the parties to maintain *status quo* till 19.11.2015 and adjourned the case. The appellant herein instead of approaching the Court below with necessary counter and objections for grant of injunction in favour of the plaintiff, approached this Court by way of appeal invoking the provisions of Order XLIII Rule (1) of Civil Procedure Code. According to the grounds raised in appeal, it is contended that the Court below without giving any opportunity to the appellant to file counter and contest the matter has passed the impugned order. But, as seen from the docket order, the Court below

has waited till 4.00 p.m. on that day and as no counter was filed on behalf of appellant herein, granted *status quo* order for limited period to enable the parties to file their counter. Therefore, contention that Court below has not given any opportunity to the appellant to file counter cannot be sustained.

The other ground urged on behalf of appellant is that Court below cannot pass *status quo* without assigning reasons. But, as seen from the material, it is not an order on merits. It is only a temporary order for a particular period to enable the opposite party to file counter and to maintain *status quo* in the meantime, as the plaintiff apprehended that the appellant and other respondents are trying to alienate the property to cause hardship to her. I do not find any wrong in the approach of the Court below in granting *status quo* for a limited period and the grounds on which the order of Court below is challenged are not tenable. Under Order 43 rule 1 C.P.C. appeal is permitted against an order passed under Order 39 rule 1 C.P.C. Here it is not an order on merits. *Ex parte* order can be challenged only if there is non-compliance of Order 39 rule 3 C.P.C. Here appellant herein made his appearance and took time for counter but failed to file counter and for his failure *status quo* is granted that too for a limited period. For the fault of appellant he cannot complain and the Court below only on the basis of affidavit, allegations of which remained unchallenged granted the order of *status quo*. Nothing is stated as to what happened in the Court below on 19.11.2015 and about the subsequent adjournments. Nothing prevented the appellant to approach the Court below before 19.11.2015 by filing counter and by submitting the facts/grounds on which the plaintiff is not entitled for the relief of injunction prayed for and instead of availing that remedy appellant filed this appeal which in my view is nothing but abuse of process of law for which the appellant has to be penalized by way of exemplary costs of Rs.10,000/-.

Accordingly, the Civil Miscellaneous Appeal is dismissed with costs of Rs.10,000/- to be payable to High Court Legal Services Committee within a period of four weeks from today.

Miscellaneous petitions pending in this appeal, if any, shall stand closed.

S.RAVI KUMAR, J

22nd March, 2016.

sur