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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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CRP No.45 of 2016

ORDER::

This civil revision petition is filed against the order dated 06-06-2015 passed in CMA No.11 of 2015 by the II Addl. District Judge, Kurnool, at Adoni, confirming the order dated 22-01-2015 passed in IA No.273 of 2014 in OS No.62 of 2014 by the Principal Junior Civil Judge, Adoni, dismissing the said IA filed under Order 39, Rules 1 and 2 and Section 151 CPC to grant temporary injunction, pending disposal of the suit.

2. The plaintiff is the revision petitioner and respondents are defendants in the suit. The plaintiff-petitioner filed the suit in OS No.62 of 2014 seeking declaration of title and consequently permanent injunction in respect of the property in Sy.No. 385/A to an extent of Ac. 0.10 cents situated at Bhoompalli Village. In the said suit, the petitioner filed IA No.273 of 2014 seeking temporary injunction and on hearing both sides, the trial Court dismissed the injunction application on 22-01-2015. The order was unsuccessfully appealed against in CMA No. 11 of 2015. Further aggrieved, this civil revision petition is filed.

3. Facts in brief, are:- Originally, Ac.1-08 cents of land in Sy. No.385/A belonged to the ancestors of the petitioner by names B. Narasanna, B. Nagappa and B. Hanumanthappa and they sold the land to one Basappa

under a registered sale deed dated 06-05-1960 and Basappa in turn sold the land to one Baddalur Kotaiah under registered sale deed dated 22-04-1964. That the said Baddalur Kotaiah sold the said land, except Ac.0-10, which includes the suit property, to several persons in bits and retained the suit property for his personal use. That after the death of Baddalur Kotaiah, his sons, B. Seshagiri Rao, B. Venkateswara Rao, B. Nageswara Rao and B. Samba Siva Rao inherited the suit property. That the sons of the Baddalur Kotaiah, after their father's death, left the village leaving the suit property in possession of the petitioner and the petitioner has been in possession and enjoyment of the suit property for more than 20 years without any interruption and to the knowledge of all and, therefore, he perfected his title to the suit property by adverse possession. De-hors that, the sons, who are legal heirs of Baddalur Kotaiah, executed registered sale deed dated 27-11-2013 in favour of the petitioner and that by virtue of the same, the petitioner became the owner of the suit property, though the 2nd son, B.Venkateswara Rao, nor his LRs were parties to the said sale deed dated 27-11-2013. That 1st respondent-who is stated to be the second wife of the said B. Venkateswara Rao is a permanent resident of Bhoompalli village and both the 1st respondent and the 2nd respondent have no right over the suit property and they were never in possession of the suit property in any capacity. That 1st respondent and 2nd respondent in collusion with each other, created registered sale deed dated 26-03-2013, Ex.P-1 in respect of the suit property.

That 2nd respondent is not the wife of B. Venkateswara Rao, 2nd son of Baddalur Kotaiah, and she is totally a stranger to the family of Baddalur Kotaiah and she has nothing to do with the suit property. That both the Courts below grossly erred in holding that the petitioner has not proved prima facie case and shown balance of convenience in his favour to grant temporary injunction, and, therefore, requires interference by this Court and the impugned orders passed by the Courts below are liable to be set aside.

4. On the other hand, it is the case of the 1st respondent that Baddalur Kottaiah's 2nd son B. Venkateswar Rao married one Suseelamma-2nd respondent and begot two sons and one daughter and her younger son died and eldest son Bhaskar Rao is alive and working at Nandyal. That in the family oral partition among the sons of Baddalur Kottaiah, the suit property fell to the share of his 2nd son B. Venkateswar Rao and consequent upon death of B. Venkateswar Rao his wife Suseelamma-2nd respondent came into possession of the suit property and erected a hut therein and was also running school. That while so, Suseelamma got job as a Teacher and therefore she left for Nandyal to work as Teacher. That after getting Teacher job at Nandyal, Suseelamma and her son Bhaskar Rao offered to sell the suit property to the father 1st respondent (Pyinti Eranna) and his father purchased the same under un-registered document dated 15-06-2004 executed by Bhaskar Rao and delivered possession of the suit property. That as the Suseelamma was working at Nandayal, she

could not put her signature in the said un-registered document, but the sale of the land was with her consent and knowledge. Since, the date of purchase, 1st defendant's father was in possession and enjoyment of the suit property and in the year 2005, 1st defendant's father divided suit property orally giving Ac.0.04 cents to the 1st defendant and Ac.0.03 cents to his sister Jayamma. That as there was no registered deed in favour of the 1st respondent's father, 1st respondent approached Suseelamma and her son Bhaskar Rao requesting them to execute registered sale deed in terms of earlier un-registered document dated 15-06-2004. That On 26-03-2013, Suseelamma-2nd respondent alone came to Sub-registrar, Kosigi and executed registered sale deed in favour of the 1st respondent, as Bhaskar Rao was in pre-occupation of with his work. That when the Government offered to give financial assistance for the construction of houses, 1st respondent and his sister Jayamma applied for the same and after due enquiry the officials identified them as eligible for the financial assistance and the revenue authorities issued possession certificates to an extent of Ac.0.04 cents to him and an extent of Ac.0.03 cents to his sister Jayamma. That when 1st respondent tried to make construction of houses on the suit property, one Raghavendra son of B. Samba Siva Rao, 4th son of Baddalur Kotaiah came with Police constables from Kosigi police station, to the construction site and by force removed some slabs and threatening with dire consequences if he proceed with construction work. That as

peace and tranquility was required to be maintained in the matter, as both the parties are claiming title to the suit property, the SI of Police, Kosigi, sent up a report to the Tahsildar, Kosigi, who in turn passed orders under section 145 Cr.P.C. restraining 1st respondent from making any constructions in the suit property. Challenging the said proceedings issued under Section 145 CrPC, the 1st respondent filed Crl.RC No.25 of 2014 before this Court. This Court by order dated 24-03-2014 allowed the said Crl.RC and set aside the proceedings issued under Section 145 Cr.P.C. That considering documents Exs.R-1 to R-5, trial Court as well as the first appellate Court found that prima facie 1st respondent has been in possession of the suit property and also felt that balance of convenience weigh in favour of the respondents and, therefore, rightly dismissed the petition to grant temporary injunction filed by the petitioner/plaintiff and the impugned orders passed by both the Courts below do not warrant any interference by this Court and the civil revision petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Perused the orders passed by both the Courts below.

6. The issue that is to be decided in this revision rests on a narrow compass. Both the parties are claiming title to the suit property under registered sale deeds Exs.P-1 and R-1. A close scrutiny of these documents Exs.P-1 and R-1 will clinch the issue.

7. Admittedly, sons of the Baddalur Kotaiah, after his father's death,

executed registered sale deed dated 27-11-2013, in favour of the petitioner in respect of the suit property, perhaps, it may be true that the 2nd son, B.Venkateswara Rao, nor his LRs were not parties to the said sale deed dated 27-11-2013. It is also the case of the petitioner that the sons of Baddalur Kotaiah left the village leaving the suit property in his possession and he has been in possession and enjoyment of the suit property for more than 20 years without any interruption and to the knowledge of all and, therefore, perfected his title to the suit property by adverse possession.

Except, the 2nd son, B. Venkateswara Rao who has not signed the sale deed dated 27-11-2013, the others sons had the authority to transfer the suit property in favour of the petitioner and the flow of title in respect of the suit property to that extent appears to be clear. Whereas it is contention of the respondents that the suit property fell to the share of B. Venkateswar Rao, in the family oral partition among the sons of Baddalur Kottaiah, and consequent upon death of B. Venkateswar Rao his wife Suseelamma-2nd respondent came into possession of the suit property and erected a hut therein. The title traced to B. Venkateswar Rao is only family oral partition. It is not clear from the evidence adduced that by virtue of the said oral partition, the suit property fell to the share of the 2nd son B. Venkateswar Rao. Admittedly, out of the total land of Ac.1-08 cents of land, Baddalur Kotaiah sold the land, except Ac.0-10 cents, which includes the suit property, to several persons in bits and retained the suit property for his

personal use. The suit property is Ac.0.08 cents and, *prima facie*, it is not clear how could the 2nd son B. Venkateswar Rao can get Ac.0-08 cents in partition out of the total land of Ac.0-10 cents of land. The sale deed under Ex.R-1 in favour of the petitioner is executed admittedly by three sons of Baddalur Kotaiah whereas the sale deed under Ex.P-1 is executed in favour of the father 1st respondent (Pyinti Eranna) was executed by the LRs of 2nd son B. Venkateswar Rao, and the title traceable to the said B. Venkateswar Rao being oral partition, cannot stand to the strict test of scrutiny when compared with Ex.P-1 executed by majority share holders of the suit property. Apart from this one more aspect which the Courts failed to appreciate is that under Ex.P-11, endorsement given by the Tahasildar, Kosigi, it was stated that no enquiry was conducted in the village and no possession certificate was given by their office, and that the person who signed on Exs.R-2 and R-3, possession certificates, issued in favour of the 1st respondent and his sister Jayamma, never worked as the MRO, Kosigi, and the signatures thereon are forged signatures of the then MRO, Kosigi.

It is settled law that if the plea of any fraud is pressed into service, the same if established, will vitiate everything. The title which befallen on B. Venkateswara Rao, 2nd son of the Baddalur Kotaiah is weak in nature and there is no clarity as to the his share in the suit property. In the circumstances, the Courts below misconstrued the evidence and proceeded on the ground that the sale deed executed in favour of the father

of the 1st respondents under Ex.R-1 was prior in time, but failed to notice that there was no flow of valid title in favour of B. Venkateswar Rao, 2nd son of the Baddalur Kotaiah, when compared to title flow under Ex.P-1 in favour of the petitioner, which was executed by the other three sons of Baddalur Kotaiah.

8. In the circumstances, the impugned orders passed by both the Courts below cannot be sustained in law and they are accordingly set aside and the IA filed by the petitioner stands allowed granting temporary injunction, pending disposal of suit. However, it is made clear that any observations made hereinabove, are only for the purpose of deciding the revision and the trial Court to decide the suit, in accordance with law, uninfluenced by the observations made hereinabove. The civil revision petition is accordingly allowed. Miscellaneous petitions, if any pending in this case are closed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 28th March, 2016
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