

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.919 of 2014

ORDER:

This Civil Miscellaneous Appeal is preferred questioning order dated 25.09.2014 passed by the Senior Civil Judge, Peddapuram

in I.A.No.173 of 2014 in O.S.No.35 of 2014, whereby the trial court dismissed the application of plaintiffs for temporary injunction.

2. This court permitted appellant to take personal notice to respondents through registered post acknowledgment due and in compliance of the said order Advocate for appellant filed Memo dated 09.08.2016 stating that notices are duly served and filed postal acknowledgment along with Memo. In spite of service of notice, respondents neither appeared in person nor through any advocate.

3. Heard Advocate for appellants.

4. The suit viz., O.S.No.35 of 2014 is filed by the appellants herein/plaintiffs for declaration that the alleged donation in respect of Ac.1-36½ of suit schedule i.e., Item No.1 and another Ac.1-36½ cents of suit schedule i.e., item No.2 by late Pantham Venkata Navaratnamma to the first defendant, and the subsequent proceedings with reference to the same including the A.P. Gazette notification dated 17.04.1986 is null and void, illegal, and contrary to law; for consequential mandatory injunction directing the first defendant to de-notify the donation; for permanent injunction restraining defendant Nos.1 to 5 and their agents, men etc., from in anyway entering or interfering with plaintiff's possession over the suit schedule properties. Plaintiffs valued the relief of

declaration separately and valued the relief of permanent injunction separately and paid separate court fee for these two reliefs.

5. Now we are only concerned with the relief of injunction. Plaintiffs in the affidavit filed in support of the I.A. stated that the land in Survey No.87 of Divili Village of an extent of Ac.3-23 cents originally belonged to Late Pantham Venkaiah, Surya Rao, and their brothers, who are sons of Dorayya, and in the partition effected between them, the said property fell to the share of Surya Rao and on his death the property devolved on his only son Venkata Krishna Murthy, who died intestate on 10.02.1958. It is also averred in the affidavit that wife of Late Krishna Murthy by name Pantham Venkata Navaratnamma sold the joint Ac.1-36½ cents out of the Eastern Acs.2-73 cents in Survey No.87 to the first plaintiff through registered sale deed dated 27.11.1984 and the remaining joint land to an extent of Ac.1-36½ cents to the second plaintiff by registered sale deed dated 27.11.1984 and delivered possession to them and they were enjoying the said land jointly in their own right and they orally effected a partition about 25 years ago and western portion fell to the share of the first plaintiff and eastern portion fell to the share of the second plaintiff. It is also averred in the affidavit that Government also recognised their right and issued pattadar passbooks and title deeds as per A.P.Record of Rights Act and they are also paying tax. It is further averred in the affidavit that the second defendant at the instance of a local politician gave a petition to the Tahsildar claiming the lands as Bhoodhan lands and to distribute the same as house sites and that the Tahsildar submitted a report to the Revenue Divisional Officer to cancel the proceedings granted to the plaintiffs on the ground that the plaintiffs obtained proceedings by

misrepresentation and that they are not entitled to obtain Pattas. Defendant Nos.2 to 5 having not satisfied with the same, tried to forcibly enter the schedule lands along with their henchmen by names Pokala Satyanarayana, Penke Lova aju, Pothula Surya Prakash, Kotteti Sattibabu, Batchala Masarayya, Gedala Ganaopathi Rao, Marukurti Rama Venkateswara Rao, Penke Nookaraju, Reddy Nagaraju, Onumu Venkata Ramana, Siringineedi Chittibabu, Vallabhasetti Satyanarayana, Dodda Venkata Rao, Godata Lakshmi, Meday Prasada Rao, Siringineedi Patrayya, Baga Srinivas, Uta Satyanarayana, Vedi Srinu, Godata Lakshmanudu and others. The defendants have no right over the plaint schedule property.

6. Respondent Nos.2 to 5 filed a counter disputing the affidavit averments and contended that the plaintiffs/petitioners cannot ask for temporary injunction as they are not really in possession and enjoyment of the property and it is further contended that the revenue authorities have no right to issue certification of enjoyment and that plaintiffs have no valid title to the suit property. It is also contended by the respondents that all the persons whose names are referred in the affidavit are necessary parties and that they are not the henchmen of these respondents and that the *prima facie* case and balance of convenience is not in favour of the petitioners and that there will be no irreparable loss to the petitioners and as the writ is already pending before the High Court with regard to the schedule properties, which was suppressed, the petitioners are not entitled for the grant of temporary injunction.

7. On these contentions, the trial court marked the documents Exs.P1 to P12 on behalf of the appellants and Exs.R1

to R3 on behalf of respondent Nos.2 to 5. On a consideration of contentions and rival contentions, with reference to the documents, the trial court held that the petitioners have not come to the court with clean hands and they have suppressed certain facts particularly the writ filed before the High Court and dismissed the application. Aggrieved by which, present appeal is preferred.

8. Heard the advocate for appellants. It is submitted that the appellants have filed their sale deeds, pattadar passbooks issued by the Government, Tax receipts from the year 2009 onwards, enjoyment certificate issued by the Tahsildar, proceedings of allotment issued by the first defendant in the name of the plaintiffs but in spite of such overwhelming documentary evidence showing possession and enjoyment of the plaint schedule property by the appellants, the court below has not considered them and refused the relief of injunction only on the ground that the petitioners have not referred to about the writ pending before this court. It is submitted that the petitioners are not parties to the said writ petition and that they have no knowledge and the said writ was filed only against the Government, therefore, the question of referring to that writ in the plaint does not arise. It is submitted that as the matter requires thorough enquiry during trial and as no appearance is made on behalf of the respondents, the CMA may be disposed of by directing the court below to take up the trial and dispose of the same as expeditiously as possible by granting *status quo* pending disposal of the suit.

9. I have perused the material papers including the impugned order dated 25.09.2014.

10. Considering the fact that the affidavit filed by the petitioners is not counteracted by the respondents by way of

counter affidavit and only verified counter is filed by the Advocate for respondent Nos.2 to 5 with bald allegations and that the revenue documents *prima facie* support the claim of the plaintiffs with regard to their right over the suit schedule property, I deem it appropriate to direct both the parties to maintain *status quo* pending disposal of the suit by directing the trial court to expedite the trial and dispose of the suit as early as possible preferably within a period of six months from the date of receipt of a copy of this order. Trial court shall dispose of the suit independently not being influenced by any of the observations made in this order.

The Civil Miscellaneous Appeal is disposed of accordingly.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE S. RAVI KUMAR

August 18, 2016
LMV