

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.Nos.913 of 2015

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989 OF 2015

Dated 1-6-2016

C.M.A.No.913 of 2015.

Between:

Puruchuri Rajasekhar and another.

..Petitioners.

And:

Veluvolu Sivaramakrishna and another.

..Respondents.

Between:

C.M.A.No.989 OF 2015

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COMMON JUDGMENT:

These two appeals are preferred against common order dated 24-11-2015 in I.A.No.127 of 2015 and I.A.No.128 of 2015 in O.S.No.109 of 2015 on the file of III Additional District Judge, Guntur.

Appellants herein are the unsuccessful plaintiffs before the court below.

Appellants filed these two applications one to restrain respondents from alienating 'A and B' schedule properties

and other to restrain the respondents from interfering with the appellants possession over the 'C'schedule property pending disposal of the suit. Suit is filed for declaration and that sale deeds executed by respondent dated 31-12-2011 are not valid and binding on the plaintiffs and for consequential injunction in respect of 'C' schedule property. Both appellants and respondents contended that one Ch.Anjaneyulu was owner of an extent of Ac.7.10 cents having acquired under registered gift deed dated 22-2-1971 from Ch.Sowjanya and enjoyed property during his life time without any obstruction from anybody.

Appellants' case is that Anjaneyulu died intestate on 11-1-1994 in Yanamadala village as bachelor and his parents pre-deceased him and therefore, his three sisters Chintalapati Annapurna, Chintalapati Lakshmi Savitri and Chintalapati Uma Devi succeeded to the property i.e., Ac.7.10 cents of land and they took possession of the property and enjoyed the same in their own right and from them, appellants purchased 5.84 cents through sale deeds dated 19-11-2007 and took possession of that Ac.5.84 cents which is part of 'A and B' schedule properties and enjoyed the same in their own right. According to appellants, they noticed that a mistake was crept in the registered sale deed dated 19-11-2007 with regard to the extent for which their vendors executed rectification deed on 20<sup>th</sup> February, 2008 and thereafter, the remaining extent of Ac.1.26 cents was sold to one K.Subbarao under registered sale deed dated 20-2-2008. Appellants also contended that they applied for conversion of Ac.5.84 cents for non-agricultural purposes and R.D.O., Guntur issued proceedings on 1-3-2008 permitting conversion and prior to this, appellants executed gift deed on 18-2-2008 in favour of Grampanchayat, Edulapalem for Ac.0.16 ¼ cents for the purpose of laying roads and that they spent huge amount and developed roads and constructed shed which is part of 'A and B' schedule properties and obtained lay out permission from the Regional Deputy Director of Town and

Country Planning and laid B.T. roads and developed entire Ac.5.84 cents in accordance with guidelines and most of the plots were sold to general public. According to appellants, except 'C' schedule property, remaining property is in possession and enjoyment of respective purchasers. According to appellants, R.1 was a land grabber and on the basis of fabricated will said to have been executed by Ch.Anjaneyulu, sale deeds were created on 31-12-2001 in respect of 'B' Schedule properties, when they tried they tried to interfere with 'C' Schedule property and tried to alienate 'B' Schedule property and the appellants submitted a report to Prathipadu Police Station on the basis of which charge sheet was also filed before VI Additional Junior Civil Judge, Guntur and unless the respondents are restrained by way of temporary injunction pending disposal of the suit, they would suffer irreparable loss.

According to respondents, they purchased 'A and B' schedule properties from Desiraju Sita Rama Prasad who got property through will dated 16-3-1992 and there is no existing land physically in D.No.55/1 and there was no subdivision for Edulapalem village and appellants were never in possession and enjoyment of land in D.No.55/1. According to respondents, District Panchayat Officer has withdrawn layout granted in D.No.55/1 of Edulapalem and Field Measurement Book of the village does not reflect any division of D.No.55 and the entire extent of D.No.55 is Ac.15.10 cents and the entries in the revenue records clearly disclose that respondents are in possession and enjoyment of the suit properties and conversion proceedings issued by R.D.O. Guntur are in respect of land in D.No.55/1 and there is no prima facie case in favour of appellants.

Both parties relied on documents in support of their respective contentions and trial court on a consideration of documents of both parties, held that prima facie case is not in favour of plaintiffs and that they failed to establish possession over 'C' Schedule property, on these two

grounds dismissed both the applications. Aggrieved by the orders of the trial court, these two appeals are filed separately one against dismissal of injunction petition in respect of 'A and B'schedule properties and the other is in respect of injunction petition relating to 'C' schedule property.

Both sides advocates submitted their arguments at length mainly touching the merits and demerits that are raised in the suit. As both appeals arise out of common order, these two appeals are also disposed of by way of common judgment.

Now the point that would arise for my consideration in these two appeals is whether trial court committed any error in refusing injunction in favour of the appellants.

**POINT:**

As seen from the record and the impugned order dated 24-11-2015, there are several factual disputes. Even with regard to death of Ch.Anjaneyulu there is a dispute. Even the death certificate produced by the respondents contradicts with each other. It is also clear from the pleadings and material that plaintiffs have already sold away 'A and B' Schedule properties to third parties by dividing the land into plots and those third parties are not before the court. In fact, some writ proceedings are also initiated in respect of sanction of lay out and cancellation of it. There is even discrepancy with regard to survey No. i.e., D.Number which was referred in the documents. It is the specific case of appellants that they purchased property in D.No.55/1 and the material produced by respondents prima facie show that there is no division of D.No.55. Though both sides advanced their arguments at length, touching above referred discrepancies, I feel it is not desirable to give any findings on these discrepancies at interlocutory stage since those aspects have to be decided only on the basis of material evidence after full-fledged trial. Though appellants claimed

relief of injunction in respect of 'C' schedule properties, their main anxiety is about 'A and B' Schedule properties, for which, they sought injunction restraining the respondents from alienation. Admittedly, plaintiffs are not the owners of 'A and B' schedule properties and they have already sold it to third parties. It is well known principle that injunction can be granted only to protect a legal right. Here there is absolutely no prima facie legal right in favour of appellants and according to arguments of advocate for appellants, they sought this relief as they undertook warrantee of sale.

Trial court has looked into the documents produced by both parties and came to a conclusion that prima facie case is not in favour of appellants. As already referred to above, without dissolving discrepancies pointed out supra, on the basis of evidence, it is not possible to give any opinion as to the correctness of the claim and counter claim of both parties. The apprehension of appellants with regard to alienation of 'A and B' schedule properties, cannot be accepted in view of principle of *lis pendence* under the provision of Transfer of Property Act.

So, for these reasons, I am of the view that it is not desirable to give any findings at this stage as serious factual discrepancies are involved which have to be decided only on full-fledged trial.

For these reasons, I am of the view that trial court has not committed any error in dismissing the applications and that there are no grounds to interfere with the result of the dismissal of both the injunction petitions by the trial court. As the controversies have to be resolved during trial, both parties shall request the trial court to expedite the trial and on such request, trial judge must consider the same and dispose of the suit as expeditiously as possible.

With the above observation, both the appeals are 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 1-6-2016.

Dvs.

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