THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

<u>CIVIL MISCELLANEOUS APPEAL NO. 1007 OF 2015</u>

<u>JUDGMENT</u>: (Per the Hon'ble Smt. Justice Anis)

1. This Civil Miscellaneous Appeal, under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'C.P.C.), is directed against the order, dated 30.11.2015 passed in I.A.No.195 of 2015 in O.S.No.235 of 2015 on the file of the VIII Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. Appellants were arrayed as the respondents, while the respondent as the petitioner in I.A. before the trial Court.

3. For the sake of convenience, the parties are referred to as arrayed in the I.A. before the trial Court.

4. The petitioner/plaintiff filed the petition under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. to grant interim injunction restraining the respondents/defendants from alienating, transferring, conveying or encumbering 18 apartments shown in the petition schedule.

5. The brief averments made in the petition filed before the trial Court are as follows:

The petitioner/plaintiff is the lawful wedded wife of the first respondent/defendant and their marriage was performed on 11.03.2012. At the time of marriage, substantial cash and jewellery were given. The first respondent took Rs.1 crore from the father and paternal uncle of the petitioner for the purpose of construction of a building in the petition schedule premises and also executed promissory notes on 26.12.2012. According to the petitioner, the first respondent utilized the entire amount and constructed the building. However, he was avoiding to repay the loan amount taken from her father and paternal uncle. On one occasion, the first respondent issued a cheque for a sum of Rs.15 lakhs in favour of her uncle. The said cheque was dishonoured. As the first respondent failed to return the loan amount, the matrimonial relationship between the petitioner and the first respondent became strained and thereafter the first respondent started harassing the petitioner and attempting to murder the petitioner, for which she lodged a criminal case including case under Protection of Women from Domestic Violence Act, 2005. The father of the petitioner and her uncle disgusted with the violent behaviour of the first respondent, graciously endorsed two promissory notes in favour of the petitioner. The petitioner stated that the construction of the building was completed and the first respondent received 18 apartments to his share, but the first respondent with a malafide intention executed 18 gift settlement deeds in favour of respondents 2 and 3 being the married sisters of the first respondent and the said gift deeds are sham and nominal documents. On 17.02.2015, the petitioner got issued a legal notice demanding the first respondent to pay the outstanding loan amount of Rs.1 crore along with interest. The first respondent having received the notice, gave a reply on 24.02.2015 by denying the loan transaction, execution of promissory notes, etc. Finally, the petitioner filed the suit against the respondents for recovery of Rs.1,31,50,000/- along with interest at 14% per annum and sought for declaring the said 18 gift settlement deeds as null and void and hit by Section 53 of the Transfer of Property Act, 1882.

6. The brief averments made in the Counter filed by the respondent No.1 before the trial Court are as follows:

The first respondent admitted the marriage with the petitioner and specifically denied that he was either given dowry or any gold ornaments at the time of marriage and on the other hand he himself spent amounts towards marriage expenses. After marriage, the petitioner started quarrelling with him and his family members and insisted the first respondent to purchase the lands at her father's native place and also to construct building in her name. As the first respondent not accepted the demand of the petitioner, she started quarrel with him. The first respondent gifted a house bearing No.3-6-V/44 situated at Vivekananda Nagar colony, Kukatapally to his sister/2nd respondent and when the petitioner tried to interfere, the second respondent filed O.S.No.506 of 2014 on the file of the II Additional Senior Civil Judge, Ranga Reddy District, in which notice was ordered and the petitioner nowhere stated about the hand loan transaction. According to the first respondent, he was doing business of marble supply and building construction and frequently he used to go out of station and at that time he is in the habit of keeping blank signed cheques, blank signed promissory notes, blank signed letter heads and blank signed non-judicial stamp papers in his house. On 20th October, 2012, when he returned from Rajasthan and verified the documents, some of them are missing. Hence, he lodged a complaint to the police.

According to the respondent, there are disputes between himself and the petitioner and the petitioner filed several criminal cases against his family members. He never borrowed any amount from the father of the petitioner and her paternal uncle at any point of time and specifically stated that he came to Hyderabad with empty hands and was doing a private job. The respondents 2 and 3, who are his married sisters, are financially sound and they invested the amounts in his business and thereby he developed the business, and as per their understanding, he would give a share in the suit schedule property, as such he executed 18 gift settlement deeds in favour of respondents 2 and 3 and these facts were borne out from the counter filed in domestic violence case. It is also specifically stated by the first respondent that the father of the petitioner by name Ram Reddy and her uncle Pratap Reddy are not having any financial capacity to pay such huge amount of Rs.1 crore, and finally prayed the Court to dismiss the petition.

7. The respondent No.2 filed counter on her behalf and also on behalf of the respondent No.3 and specifically stated that the transactions between the first respondent and the respondents 2 and 3 are genuine transactions, as such the petitioner cannot seek cancellation of the said transactions. Further, the third parties cannot question the genuineness of the transactions as the gift deeds are registered documents and the property was transferred as per law and the present petition is not maintainable for grant of injunction, and prayed the Court to dismiss the petition.

8. Basing on the above pleadings, the Tribunal framed a point and in order to substantiate their case, Exs.P.1 to P.29 got marked on behalf of the petitioner and Exs.R.1 to R.14 got marked on behalf of the respondents before the trial Court.

9. After considering the pleadings and the documentary evidence and upon hearing the learned counsel for both the parties, the trial Court held as follows:

> "In the result, the petition is partly allowed by granting interim injunction restraining the respondents 2 and 3 from alienating in any manner two apartments each among the (18) apartments gifted to them by respondent No.1 till the disposal of the suit, by giving a choice to the petitioner and file a memo before the court about the particulars of those apartments (4) in total chosen by the petitioner."

10. Aggrieved by the order passed by the trial Court, the respondents preferred the present Civil Miscellaneous Appeal.

11. The learned counsel for the appellants/respondents argued that the petition filed by the petitioner for grant of injunction is unknown to law as the suit filed by the petitioner/plaintiff basing on promissory notes and the Court below has not recorded any finding on *prima facie* case, balance of convenience and irreparable loss/injury while granting temporary injunction. It is also argued that the

petitioner filed the suit for recovery of money, as such the only remedy available to the petitioner by way of interlocutory order is an order of attachment before judgment or arrest before judgment and that grant of injunction against the alienation of built up area is almost unknown to law and even no reasons were assigned for granting injunction. It is also argued that the Court below ought not to have granted any injunction against the respondents 2 and 3 who are the lawful owners of the built up area under the registered gift deeds and that no injunction can be granted against the true owner. It is also argued that there is no privity of contract between the petitioner and the respondents 2 and 3 and that the gift deeds are valid till its cancellation by the competent Court, and finally prayed the Court to allow C.M.A. by setting aside the order dated 30.11.2015 passed by the Court below in I.A.No.195 of 2015 in O.S.No.235 of 2015.

12. On the other hand, the learned counsel for the respondent/petitioner argued that the transactions entered between first respondent and the respondents 2 and 3 in execution of 18 gift settlement deeds are in violation of the provisions contained in Section 53 of the Transfer of Property Act, 1882 as being sham and nominal documents. It is also argued that fraud has been played to defeat the claim of the

petitioner, and prayed the Court to dismiss the C.M.A. by confirming the order of the Court below.

13. After hearing both sides, the point that arises for consideration is:

> Whether the appellants/respondents have made out any case to set aside the impugned order passed by the trial Court as prayed for?

14. **POINT**:

A perusal of the record shows that there is no dispute that the petitioner is the wife of the first respondent and the respondents 2 and 3 are the sisters of the first respondent. The first respondent constructed a building, namely, the Square over the entire extent of 'A' schedule property and on 18.03.2014 and 03.04.2014, he executed gift deeds in favour of respondents 2 and 3. There is no dispute that the second respondent filed O.S.No.506 of 2014 against the petitioner and her parents on the file of the II Additional Senior Civil Judge, Ranga Reddy district and the same is pending.

15. The main contention of the petitioner is that an amount of Rs.1 crore was taken by the first respondent from her father and paternal uncle for the purpose of construction of the building and gave assurance that the amount would be

repaid after the construction of the building; that the said amount was not returned to her father and paternal uncle and in turn the first respondent executed two promissory notes in their favour; that on 26.12.2012, the father and paternal uncle of the petitioner endorsed the said promissory notes in her favour and to defeat the purpose, the first respondent without payment, executed the gift deeds in favour of respondents 2 and 3 and they are sham documents.

16. Admittedly, the petitioner has no *locus standi* to challenge the gift deeds executed by the first respondent on 18.03.2014 and 03.04.2014 in favour of respondents 2 and 3. There is no privity of contract between the petitioner and the respondents 2 and 3. On this ground alone, the petition is liable to be dismissed.

17. A perusal of the pleadings shows that the petitioner filed the suit for recovery of money of Rs.1,31,50,000/- along with future interest. The petitioner instead of filing petitioner under Order XXXVIII Rule 5 C.P.C. for attachment before judgment, filed the petition under Order XXXIX Rules 1 and 2 C.P.C. for temporary injunction and the same is not maintainable. In a suit for recovery of money, only relief can be granted is an order of attachment before judgment or arrest before judgment. Grant of injunction against the true

owners i.e., respondents 2 and 3 from alienating the property, is not tenable. Admittedly, after execution of the gift settlement deeds by the first respondent in favour of respondents 2 and 3, they became absolute owners of 18 apartments. Therefore, no injunction can be granted against the true owner. Admittedly, the relationship between the petitioner and the first respondent has got strained and she filed criminal cases including domestic violence case against the first respondent and his family members.

18. A perusal of the order also shows that the Court below has not recorded the three essential requirements for grant of injunction, namely, *prima facie* case, balance of convenience and irreparable loss or injury. In the absence of such finding, no interlocutory orders could have been passed by the Court below. Further, till the gift deeds in favour of respondents 2 and 3 are declared as illegal, question of granting injunction against the above respondents does not arise and that the order passed by the Court below is misconceived and is without any basis. Therefore, the order of the trial Court in granting injunction in the petition filed under Order XXXIX Rules 1 and 2 C.P.C. is liable to be set aside.

19. In the result, the Civil Miscellaneous Appeal is allowed, setting aside the order dated 30.11.2015, passed by the VIII Additional District Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.195 of 2015 in O.S.No.235 of 2015. No order as to costs. However, it is made clear that the trial Court shall dispose of the suit on its own merits, uninfluenced by any of the observations made by this Court in this order or in the impugned order passed by the trial Court itself.

20. Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

(SANJAY KUMAR, J)

(ANIS, J)

31.10.2016
Anr

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