

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.M.A.No.1010 of 2016

JUDGMENT : (per Hon'ble Sri Justice A.V.Sesha Sai)

This Civil Miscellaneous Appeal, filed under Order 43 Rule 1 of the Code of Civil Procedure, challenges the order and decree dated 23.9.2016 passed by the Judge, Family Court-cum-VII Additional District and Sessions Judge, Medak at Sangareddy in I.A.No.532 of 2016 in A.S.No.16 of 2016.

2. The circumstances, in nut-shell, leading to the filing of the present C.M.A. are as infra:

(1) The respondent herein instituted O.S.No.503 of 2006 on the file of Court of the Principal Junior Civil Judge, Sangareddy against the appellant herein for perpetual injunction to restrain the defendant, his men or any other person or persons on his behalf from interfering with the stated possession and enjoyment of the plaintiff in respect of the suit schedule property. Plaintiff schedule property is the agricultural land in S.Nos.182, admeasuring Ac.1.00 gts., 183 admeasuring Ac.0.26 gts and 184, admeasuring Ac.5-31 gts. situated at Kollur Village, Ramachandrapuram Mandal, Medak District. Along with the suit, the respondent herein also filed I.A.No.1282 of 2006 under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, seeking interim injunction. On 11.10.2006 the learned Principal Junior Civil Judge granted exparte ad interim injunction.

(2) The defendant/appellant herein filed a written statement, resisting the plaint averments. Thereafter, on the basis of the pleadings available

on record, the learned Principal Junior Civil Judge framed the following issues for trial.

- (i) Whether the plaintiff is entitled for perpetual injunction against the defendant over the suit schedule property as prayed for ?
- (ii) To what relief ?

(3) During the course of trial, plaintiff examined himself as P.W.1 and also examined one Mr.Velimela Pramod as P.W.2 and filed Exs.A1 to A22 and whereas defendant examined himself as D.W.1 and filed Exs.B1 to B14. The learned Principal Junior Civil Judge, by way of judgment and decree dated 2.5.2016, dismissed O.S.No.503 of 2006. Aggrieved by the dismissal of O.S.No.503 of 2006, the plaintiff/respondent herein preferred A.S.No.16 of 2016 before the Judge, Family Court-cum-VII Additional District and Sessions Judge, Medak at Sangareddy. Along with the said appeal, respondent herein also filed I.A.No.532 of 2016 under Order XXXIX Rules 1 and 2 for interim injunction. Resisting the said application, defendant/appellant herein filed counter. The learned Additional District Judge, by way of an order dated 23.9.2016, allowed I.A.No.532 of 2016, granting temporary injunction against the appellant herein.

3. In the above background, challenging the validity and legal sustainability of the said order, the present Civil Miscellaneous Appeal has been filed.

4. Heard the learned counsel for the appellant, Sri N.Subba Rao and the learned counsel for the respondent, Sri P.Shiva Kumar apart from perusing the material available before the Court.

5. Submissions/contentions of Sri N.Subba Rao, learned counsel for the Appellant

- (1) The order impugned is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.
- (2) The respondent cannot be placed in a better position than the position existing pending suit.
- (3) The temporary injunction granted on 11.10.2006 in I.A.No.1282 of 2006 in O.S.No.503 of 2006 did not continue beyond 4.7.2011, till the pronouncement of judgment on 2.5.2016, dismissing the suit.
- (4) Property was purchased in the name of firm viz., Nadella Estate Limited, represented by its Managing Director, as such, the grant of injunction against individual is impermissible.
- (5) In the absence of any boundaries in the plaint schedule, as admitted by P.W.1, the Court below erred in granting injunction.
- (6) The finding of the Court below on the absence of mutation in the name of company is untenable.
- (7) The Court below ought to have taken into account Ex.B1-Registered sale deed and other documents viz., Exs.B2 - B10 which show possession of the defendant's vendor.
- (8) The respondent has not shown any prima facie case, balance of convenience in his favour and irreparable loss likely to be suffered by him.

6. Submissions/contentions of Sri P.Shiva Kumar, learned counsel for the respondent

- (1) There is no illegality nor there exists any infirmity in the impugned order, as such the same does not warrant any interference of this Court under Order XLIII Rule 1 of CPC.

- (2) The ex-parte ad interim injunction granted by the trial Court pending suit in I.A.No.1282 of 2006 on 11.10.2006 continued till the dismissal of suit on 2.5.2016 and as such the balance of convenience is in favour of the plaintiff.
- (3) Since Ex.B1 was executed by GPA after the death of principal, Sri Mazar Hussain on 24.7.1989 as per Ex.A5, Ex.B1 is of no consequence.
- (4) Ex.A1 to A22 show the possession of the plaintiff over the subject property.

7. In the above background, the issues which emerge for consideration of this Court are:

- (i) Whether the interim injunction granted by the trial Court in I.A.No.1282 of 2006 continued only till 4.7.2011 as stated by the appellant or whether it continued till the dismissal of the suit on 2.5.2016 ?
- (ii) Whether the three necessary ingredients viz., prima facie case, balance of convenience and irreparable loss are in favour of the plaintiff and whether the Court below is justified in granting interim injunction in favour of the plaintiff/respondent herein ?

8. Issue No.1

The information available before this Court vividly reveals that along with the suit, the plaintiff/respondent herein filed I.A.No.1282 of 2006 under Order XXXIX Rules 1 and 2 of CPC for interim injunction. The learned Principal Junior Civil Judge, on 11.10.2006 granted exparte ad interim injunction, restraining the defendant and his men etc., from interfering with the possession and enjoyment of the plaintiff over the suit schedule property while directing the petition to be posted on 26.10.2006. The docket orders

dated 8.3.2011, 6.6.2011, 4.7.2011 and 11.7.2011 clearly show that the I.A.No.1282 of 2006 stood adjourned on the request of defendant thrice. The said extension of time, by any stretch of imagination cannot be construed as the orders, limiting the interim injunction order. Therefore, it can be safely concluded that the interim injunction granted by the trial Court on 11.10.2006 in I.A.No.1282 of 2006 continued till the dismissal of suit on 2.5.2016. The contention advanced contra on behalf of the appellant is untenable and is hereby rejected, as such, Issue No.1 is answered in favour of the respondent and against the appellant.

9. Issue No.2

The case of the plaintiff/respondent is that he purchased the subject property by way of Ex.A1-Registered sale deed dated 18.9.2003 from S/Sri Syed Iqbal Mohd. & Syed Imtiaz Mohammed, sons of Sri Syed Mazar Hussain and that they delivered possession of the property on the even date and mutation was effected in his favour and pattadar passbook and title deed were issued. In support of his case, he filed Exs.A1 – A22. On the other hand, defendant is claiming through Ex.B1-Registered Sale Deed bearing Document No.28839 of 2006 executed by the GPA holder of Sri Mazar Hussain. It is also the case of the plaintiff that as per Ex.A5-Death Certificate, Sri Mazar Hussain, the principal of the said GPA passed away on 24.7.1989, as such, Ex.B1 executed in the year 2006 cannot be given any credence. A perusal of the order under challenge shows, in candid terms, that the learned Additional District Judge considered the three necessary ingredients of Order XXXIX Rules 1 and 2 of CPC viz., prima facie case, balance of convenience and irreparable loss and also took into account the aspect of presumption as per revenue entries as per Section 6 of Pattadar Passbooks Act, 1971 and also the fact that the injunction granted in 2006

pending suit continued till the dismissal of suit and came to a conclusion in favour of the respondent and granted injunction on 23.9.2016, thereby restoring the injunction granted on 11.10.2006, which continued till the dismissal of suit.

10. A perusal of the order under challenge manifestly shows that the learned Judge assigned cogent and convincing reasons for arriving at the conclusion. Further microscopic analysis and assessment of the evidence adduced in the suit may show influence on the final adjudication of the appeal and this Court does not propose to undertake such exercise, in the interest of justice. Therefore, this Court has absolutely no hesitation to hold that the appellant herein has failed in making out a case, warranting interference of this Court under Order XLIII Rule 1 of CPC.

11. For the aforesaid reasons, this Civil Miscellaneous Appeal is dismissed, confirming the order and decree dated 23.9.2016 passed by the Judge, Family Court-cum-VII Additional District and Sessions Judge, Medak at Sangareddy in I.A.No.532 of 2016 in A.S.No.16 of 2016. It is made clear that the learned VII Additional District Judge shall dispose of A.S.No.16 of 2016 as expeditiously as possible, without being influenced by the observations made either in the present order or in the order under challenge. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

SANJAY KUMAR, J

A.V.SESHA SAI, J

Date: 29.12.2016
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THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI



C.M.A.No.1010 of 2016

29.12.2016

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