

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No. 807 OF 2015

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JUDGMENT:

This Civil Miscellaneous Appeal is filed against the order dated 16.10.2015 in I.A.No.1004 of 2015 in A.S.No.67 of 2015, wherein the lower Appellate Court had dismissed the application filed by the appellant for grant of temporary injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the schedule property which is Ac.5.10 cents of land in Sy.No.147 Pyki of Gonabavi village.

2. Heard learned counsel for the appellant and learned counsel for the respondent.

3. Learned counsel for the appellant submits that during the pendency of the suit before the trial Court, injunction was operating till the disposal of the suit and basing on the same, the lower appellate Court should have granted injunction. The contentions of the appellant should have been examined by the lower appellate Court, but the lower appellate Court, without going into the merits of the case, erroneously dismissed the application for temporary injunction.

4. On the other hand, learned counsel for the respondent submits that the trial Court gave a specific finding that the appellant is not in possession of the suit schedule property and that the lower appellate Court had thoroughly examined the application for temporary injunction, and dismissed the same, as such, no interference is called for.

5. It is the case of the appellant that he had filed O.S.No.209 of 2009 on the file of Senior Civil Judge, Adoni against the respondent for the relief of permanent injunction and that suit was dismissed on merits. Against the same, he filed A.S.No.67 of 2015 along with Interlocutory Application i.e., I.A.No.1004 of 2015 for the relief of

temporary injunction against the respondent. The lower appellate Court, basing on the documents relied on behalf of the respondent, i.e., Exs.B17 to B19, registered sale deeds and Exs.B3 to B6 Adangals and Exs.B8 to B16 receipts, came to the conclusion that the appellant is not in lawful possession of the suit schedule property. The trial Court, by relying on Ex.B17 held that Tulasamma sold an extent of Acs.5.10 cents in Sy.No.147 out of Acs.15.10 cents and also sold an extent of Acs.3.10 cents in Sy.No.148. The trial Court also found that the said Tulasamma is none other than the grand mother of the appellant. The trial Court, after considering the oral and documentary evidence on record, concluded that it is not the case of the appellant that the suit land and land covered under Ex.B17 are different lands.

In view of the above facts and circumstances and also in view of the observations of the trial Court and the lower appellate Court, I do not see any illegality or infirmity in the order passed by the lower Appellate Court, and same is liable to be dismissed.

Accordingly, the Civil Miscellaneous Appeal is dismissed. However, the lower appellate Court shall decide the appeal on merits, preferably within a period of three (3) months, from the date of receipt of a copy of this order, without being influenced by any of the observations in the order passed by this Court. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

07.01.2016
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA.No.807 OF 2015

Date:07.01.2016

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