

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

C.M.A.No. 575 OF 2016

DATED 11TH AUGUST, 2016

Between:

N.Dayanand ... Appellant

AND

N.Ashok Kumar and another ... Respondents

Counsel for the appellant : Sri M.A.K.Mukheed

Counsel for respondent No. 1 : Smt. D.Pramada

Counsel for respondent No. 2 : --

THE COURT MADE THE FOLLOWING

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This civil miscellaneous appeal arises out of order dated 01-06-2016

in I.A.No. 226 of 2016 in O.S.No. 839 of 2013 on the file of the Court of IV Additional District Judge, Ranga Reddy at L.B.Nagar, Hyderabad (for short, 'the lower Court').

2. We have heard Sri M.A.K.Mukheed, learned counsel for the appellant and Smt. D.Pramada, learned counsel for respondent No. 1. The appellant has filed the aforementioned suit for partition of plaint A to C schedule properties. He has filed I.A.No. 365 of 2013 for injunction restraining respondent No. 1 and his agents from alienating suit schedule properties pending the suit. By order dated 02-12-2014, the lower Court has allowed the said I.A. While the suit is pending, respondent No. 1 filed I.A.No. 226 of 2016 for temporary injunction restraining the appellant herein from dealing with half share of respondent No. 1 in B schedule property. The lower Court allowed the said application.

3. A perusal of the order of the lower Court shows that it has observed in para No. 5 that though there cannot be injunction against the appellant from dealing with the property, certainly the relief directing the appellant not to give scope for inducting third party into possession can be granted. Having made such observation, the lower Court has injuncted the appellant from dealing with the Ac. 3.15 guntas which represents half the property claimed by respondent No. 1. In our opinion, the lower Court has failed to keep in mind the cardinal principle of law that no injunction can be granted against a co-owner. Though each party may be claiming half share in suit schedule properties, till the property is partitioned by metes and bounds, the parties cannot claim possession over any particular part of the property. While restraining a party by way of injunction from inducting third party into possession is permissible in a suit for partition, it is neither appropriate nor permissible for the Court to restrain a coparcener from dealing with joint family property to enable the other parties to exclusively enjoy the same.

4. In this view of the matter, we are of the opinion that the lower Court has committed a serious error to the extent of restraining the appellant from dealing with half share in item B schedule property. This part of the order of the lower Court is set aside while confirming the order to the extent of restraining the appellant from inducting third parties into possession of any part of B schedule property. Learned counsel for respondent No. 1 requested for a direction to the lower Court for an early disposal of the suit. Considering the nature of the dispute, the lower Court is directed to dispose of the suit as expeditiously as possible.

5. The civil miscellaneous appeal is, accordingly, allowed in part.

6. As a sequel to disposal of the civil miscellaneous appeal, C.M.A.M.P.No. 1168 of 2016 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD,

J.

Date: 11-08-2016.

JSK