

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.907 of 2015

JUDGMENT:

This appeal is preferred against order dated 20.06.2014 in I.A.No.74 of 2014 in O.S.No.11 of 2014 on the file of II Additional District Judge, Kurnool at Adoni.

2. Appellant herein is defendant No.5 and respondent No.1 herein is plaintiff in O.S.No.11 of 2014. Respondent No.1 filed O.S.No.11 of 2014 seeking partition of plaint schedule properties contending that they originally belong to one Gundu Rao, who died leaving three sons namely M.K. Gopal Rao, M.K. Krishna Murthy Rao and M.K. Narayana Rao and that plaintiff, being son of M.K. Gopal Rao, is entitled for half share in the plaint schedule properties and as defendant Nos.1 to 4 did not come forward and did not agree for partition, he filed suit for partition of plaint schedule properties. It is further contended that defendant No.5 is making attempts to trespass into the land under the guise of registered sale deed dated 09.12.2013, therefore, defendant No.5 has to be restrained by way of temporary injunction.

3. Defendant No.5 resisted the claim of plaintiff and filed counter contending that he is a bonafide purchaser of land of an extent of Ac.2.52 cents in Sy.No.338/A2 and Ac.0.76 cents in Sy.No.339/A from respondent No.3 (Defendant No.3), who got these properties in a division

effected on 04.02.1963. He further contended revenue authorities recognized his ownership and issued pattadar pass books and title deed.

4. On these contentions, the trial Court granted temporary injunction, as prayed for. Questioning the same, present appeal is preferred.

5. Heard both sides.

6. Advocate for appellant submitted that appellant could not produce certain documents, which are encumbrance certificate, pattadar pass book, title deed and other revenue records, to establish that appellant is a bonafide purchaser for a valuable consideration and that an opportunity may be given to appellant by remitting back the case to the trial Court for fresh consideration.

7. Advocate for respondent No.1-plaintiff opposed the said proposal and submitted that the trial Court on a proper consideration of the material, recorded a finding that plaintiff is entitled for injunction as prima facie case, balance of convenience is in favour of plaintiff, therefore, there are no grounds to interfere with the order granted by the trial Court.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 20.06.2014 in I.A.No.74 of 2014 in O.S.No.11 of 2014 on the file of II Additional District Judge, Kurnool at Adoni, is legal, proper and correct?

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POINT :

9. I have perused the material papers including the impugned order dated 20.06.2014. As seen from the relief, the plaintiff prayed for injunction restraining the appellant, his relatives and followers from entering into the petition schedule land till disposal of the suit. Here, the appellant specifically contended that there was earlier partition in the year 1963 and he purchased the property from one of the sharers. Advocate for appellant contended that the important documents, like encumbrance certificate, pattadar pass book, title deed, ROR, pahanies of 1424 fasli, 1424 fasli, 1423 fasli and 1423 fasli are in favour of appellant, but they could not be filed due to lapse on the part of counsel in the trial Court and an opportunity may be given to appellant to put forth his case, so that the Court can appreciate the material afresh. Even as seen from the affidavit of plaintiff, it is the specific case of plaintiff that defendant No.5 is contemplating to trespass into the plaint schedule properties under the guise of registered sale deed dated 09.12.2013. Considering these aspects, without recording any finding as to the contentions and rival contentions of both parties, I feel that this is a fit case where the matter has to be remitted back to the trial Court directing the trial Court to give opportunity to both parties and to decide the matter afresh since the appellant filed

some documents here at appellate stage.

10. Accordingly, the appeal is allowed and impugned order dated 20.06.2014 passed in I.A.No.74 of 2014 in O.S.No.11 of 2014 on the file of II Additional District Judge, Kurnool at Adoni, is set aside and the matter is remitted back to II Additional District Judge, Kurnool at Adoni, for disposal, in accordance with law. Trial Court shall give opportunity to both parties to file additional material and consider them afresh in accordance with law.

11. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

22nd June 2016.

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