

*IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH*

CIVIL MISCELLANEOUS APPEAL No.188 of 2013 and
CIVIL REVISION PETITION No.1528 of 2013

Between:

Andhra Pradesh Neelikula Sangham, Hyderabad

... Petitioner

And

A.Lakshmikanth Rao and others

...

Respondents

**JUDGMENT PRONOUNCED ON 18.7.2016
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the
Judgment?
Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes

3. Whether Their Ladyship/Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

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

HON'BLE SRI JUSTICE G.SHYAM PRASAD

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> Head Note:

! Counsel for the Petitioner: Mr. K.Govind

^ Counsel for the Respondents: Mr. R.Ashok Goud

? Cases Referred:
NIL

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And

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..Respondents

Counsel for the petitioner: Mr. K.Govind

Counsel for the respondents: Mr. R.Ashok Goud

The Court made the following:

—

COMMON JUDGMENT: (*Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The Civil Miscellaneous Appeal is filed against the order, dated 21.12.2012, in I.A.No.442 of 2012 in O.S.No.626 of 2007 on the file of learned V Additional District Judge, (Fast Track Court), Ranga Reddy District at L.B.Nagar. The Civil Revision Petition is filed against the order of the same date in I.A.No.444 of 2012 in the same suit before the same Court.

The brief facts leading to the filing of both these cases are briefly stated hereunder:

Respondent Nos.2 and 3 are the parents of respondent Nos.1 and 4. It appears that some disputes arose within their family consequent on respondent No.1 marrying a girl against the wishes of his parents-respondent Nos.2 and 3. The differences within the family appeared to have aggravated on respondent No.3, in whose name 'A' schedule property stood, gifting it in favour of her another son, viz., respondent No.4 on 26.10.1993. Respondent No.1 filed O.S.No.626 of 2007

for partition and separate possession of 1/4th share in 'A' and 'B' schedule properties and also for cancellation of the gift deed, dated 26.10.1993, executed by respondent No.3 in favour of respondent No.4. Along with the said suit, respondent No.1 filed I.A.No.1182 of 2007 under Order-XXXIX Rules-1 and 2 C.P.C. for grant of temporary injunction restraining respondent Nos.2 to 4 and their men from alienating the suit schedule properties to third parties, pending the suit. Respondent Nos.2 to 4 contested the said application by filing a counter-affidavit, wherein it was, *inter alia*, averred that 'A' schedule property was the exclusive property of respondent No.3; that she purchased the same with her own funds received towards *pasupu kumkuma* from her parents at the time of her marriage; that respondent No.4 is the eldest son of respondent Nos.2 and 3; that he worked in different organizations and made earnings; and that he purchased 'B' schedule property in his name out of his own funds. They have also specifically pleaded that they are in exclusive possession of 'A' and 'B' schedule properties and that respondent No.1 had no right whatsoever over the same.

Upon consideration of the respective pleas of the parties, the lower Court dismissed I.A.No.1182 of 2007, by order, dated 13.02.2008. In this context, it is apt to reproduce some of the findings of the lower Court in the order, dated 13.02.2008, passed in I.A.No.1182 of 2007, which are relevant for the disposal of the present cases, hereunder:

“.....Thus, the documentary evidence in Exs.B1 to B6 and B13 to B77 clinchingly establishes that the 2nd and 3rd respondents having been in exclusive possession and enjoyment of plaint 'A' & 'B' schedule properties paid electricity charges, house tax and water tax etc.,”

The lower Court further held as under:

“....Admittedly, the respondents are owning

properties and they are also earning members. It is not at all the case of petitioner that the respondents have no property to recover any damages from them in case he succeeds in the suit. Admittedly plaint 'A & B' schedule properties are standing in the name of 3rd respondent. Therefore, it is not difficult for the petitioner to recover any damages from the respondents in case he succeeds in the suit. Thus, the petitioner failed to establish that he will suffer irreparable loss in the event of refusal to grant temporary injunction. Further the petitioner also failed to produce any evidence in support of his contention that the respondents are trying to alienate the schedule property in favour of third parties except making any stray sentence in his affidavit that the respondents are trying to alienate the schedule property in favour of third parties.....”

It is pertinent to note that before the aforesaid I.A. was disposed of, respondent No.4, who was himself a donee through respondent No.3, executed and registered a gift deed, dated 27.08.2007, in respect of 'A' schedule property in favour of the appellant herein. The order in I.A.No.1182 of 2007 referred to above had attained finality. It is only on 21.12.2012 that respondent No.1 got the prayer in the suit amended by seeking cancellation of the gift deed, dated 27.08.2007. Even before the prayer in the suit was amended to the above effect, respondent No.1 has filed I.A.No.442 of 2012 for an *ad interim* injunction restraining the appellant, who was proposed to be impleaded as defendant No.4 in the suit, from interfering with his peaceful possession and enjoyment of 'A' schedule property, pending the suit.

The appellant has contested the said application by filing a counter-affidavit, wherein it has *inter alia* denied the claim of respondent No.1 that it is the tenants of respondent No.1 and that it is paying rents to him. A specific plea was taken that respondent No.1 is not the

owner of the 'A' schedule property; that the said property originally belonged to respondent No.3, who is no other than the mother of respondent No.1; that she has gifted the property in favour of respondent No.4, who in turn executed a gift deed in favour of the appellant; that the tenants in possession of the said property were paying rents to the appellant regularly; and that therefore, the transfer of the property by way of gift by respondent No.4 in favour of the appellant is genuine and not a fraudulent one.

Considering the rival pleas of the parties, the trial Court has granted ad interim injunction as prayed for by respondent No.1 in I.A.No.442 of 2012, by its order, dated 21.12.2012. Based on the said order, the lower Court has also allowed I.A.No.444 of 2012 filed by respondent No.1 for a direction to the appellant not to act upon the gift settlement deed, dated 27.8.2007, pertaining to 'A' schedule property. Feeling aggrieved by both these orders, these two cases have been filed by Andhra Pradesh Neelikula Sangam, which was added as defendant No.4 in the suit, by order dated 21.8.2012, of the lower Court.

We have heard K.Govind, learned counsel for the appellant and the petitioner in the C.M.A. and C.R.P., respectively, and Mr. R.Ashok Goud, learned counsel for respondent No.1 in both these cases.

A perusal of the plaint in the suit filed by respondent No.1 shows that he has paid Court fees both in respect of 'A' and 'B' schedule properties under Section-34(1) of the Andhra Pradesh Court fee and Suit Valuation Act, 1956, which applies to a person who is not in possession of the property. In addition to this, one of the prayers in the suit sought by respondent No.1 is to pass a decree for possession to an extent of 1/4th share in both 'A' and 'B' schedule properties. These facts would clearly show that respondent No.1 himself has

approached the lower Court on the stand that he is not in possession of 'A' schedule properties. Added to that, in I.A.No.1182 of 2007, categorical findings, as reproduced herein before, were rendered by the lower Court to the effect that Exs.B-1 to B-6 and B-13 to B-77 clinchingly establish that respondent Nos.3 and 4 were in exclusive possession of 'A' and 'B' schedule properties; that both the schedule properties stood in the name of respondent No.1; that in pursuance of the gift deed, dated 26.10.1993, the properties were mutated in the name of respondent No.4; and that, as on the date of passing of the said order, it stood in his name. Indeed, based on those findings, the lower Court has declined to grant injunction in favour of respondent No.1 restraining respondent Nos.2 to 4 from alienating the suit schedule properties to third parties. However, the fact remains that even before the said order was passed, respondent No.4 has gifted the 'A' schedule property in favour of the appellant in the C.M.A. and the petitioner in C.R.P. on 27.8.2007.

In the light of the above uncontroverted facts, we are at loss to know as to how respondent No.1 could have filed I.A.No.442 of 2012 seeking a direction to the appellant not to interfere with his purported peaceful possession and enjoyment of the 'A' schedule property. Even if such an application is filed, there was absolutely no ground for the lower Court to grant such an order.

A perusal of the order under appeal would show that the only ground on which the lower Court has granted injunction in favour of respondent No.1 was Section-52 of the Transfer of Property Act, 1882 (for short 'the Act'), which along with explanation read as under:

Section-52-Transfer of property pending suit relating thereto-

"For the purposes of this section, the pendency of a suit or proceeding shall be

deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for that time being in force.”

From a careful reading of the above extracted statutory provision, it is clear that it is not every transfer of an immovable property which is hit by the said provision, and it is only such transfer of an immovable property by one party which may affect the rights of any other party that is prohibited by the said provision. The question whether the transfer of property by respondent No.4 in favour of the appellant has affected the rights of respondent No.1 or not is a matter which requires to be adjudicated in the suit.

The lower Court appeared to have thoroughly misread the provisions of Section-52 of the Act in concluding that the alienation (gift) made by respondent No.4 in favour of the appellant in the C.M.A. is invalid and that, no rights flow from out of such invalid transfer. The lower Court has committed a further error in assuming that respondent No.1 was in possession of the ‘A’ schedule property ignoring the well-considered findings rendered by his predecessor in I.A.No.1182 of 2007 and also respondent No.1’s own case set up in the plaint and the prayers sought by him in the suit, as noted herein before.

The question as to whether the gift deeds, dated 26.10.1993 and 27.8.2007, are valid or not needs to be adjudicated in O.S.No.626 of 2007, which is pending. As respondent No.1 failed to show any semblance of evidence that he is in possession of the ‘A’ schedule

property and on the contrary, he suffered adverse findings in this regard in I.A.No.1182 of 2007, he is not entitled to an order of injunction.

In the light of the above discussion, order, dated 21.12.2012, in I.A.No.442 of 2012 is set aside. Since order, dated 21.12.2012, in I.A.No.444 of 2012 was passed following the order in I.A.No.442 of 2012, with the setting aside of the said order in the C.M.A. as above, this order is also set aside.

Accordingly, both the Civil Miscellaneous Appeal the Civil Revision Petition are allowed.

As a sequel to disposal of the cases, CMAMP.No.396 of 2013 and CRPMP.No.2093 of 2013 are disposed of and CMAMP.No.1071 of 2016 is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

18th July 2016

Note:

LR copies to be marked.

B/o

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