

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.106 of 2016

Date:04.04.2016

Between:

Nagasuru Damodar Gupta

... Appellant.

AND

Nagasuru Lakshmi Devi and others.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.106 of 2016

JUDGMENT:

This appeal is preferred questioning order dated 04-12-2015 in I.A.No.122/2015 in O.S.No.34/2015 on the file of VII Additional District Judge, Guntur wherein trial Court passed the following docket order:-

“DOCKET-ORDER

This petition is filed U/O 39 Rule 1 & 2 C.P.C., prays to grant temporary injunction restraining the respondents from alienating petition schedule properties till the disposal of the suit.

1. *That issue urgent notice to Respondents mean while Status Quo Order granted till 28-01-2016.”*

2. The suit was filed for partition and in that, I.A.No.122/2015 is filed seeking temporary injunction restraining the respondents from alienating the petition schedule properties pending disposal of the suit.

3. Appellant herein is D10 in the above referred suit and the allegation against D10 as per the plaint averments in Para No.10, which are as follows:-

“Damodar Gupta the 10th defendant in this suit is not a descendant or Pandu Rangaiah and Indravathamma, but a distant relative of N. Pandu Rangaiah. His father Naga Raju himself was not a propertied person, but a self made man, eking out his livelihood by odd jobs. He has sons and daughters and no liquid amount anywhere in his name. The late N. Pandu Rangaiah took Damodar Gupta into confidence gave him a portion in his business and happened him to shape him up. After the death of N. Pandu Rangaiah, Indravathamma her sons Venkata Sudhakar Rao and Gopal Rao were instrumental in purchasing the properties under the sale deed dated 16-9-2010 for a sum of Rs.10,60,000/- in his name when he was then aged about 27 years, not commanding any business but solely dependant on the fortunes of the Pandu Rangaiah family. Defendants 1 to 3 nominally purchased the properties in his name on 05-12-2007, it is plaint Doc.No.22, taking inspiration from Pandu Rangaiah of property valued at Rs.33,20,000/- the sale deed dated 16-09-2010, it is plaint Doc.No.23, in the name of the 10th defendant nominally. The properties purchased with the funds of the family nominally in the name of Damodar Gupta are set forth in the E-schedule. They are the subject matter of development agreement dated 2-5-2015 locked up by D-1 to D-3. These E-schedule properties are in Vizag, they are as follows:

<i>Sl. No.</i>	<i>Date of Document</i>	<i>Name of Vendee</i>	<i>Consideration of t h e document in rupees</i>
1.	05-12-2007	N.Damodar Gupta	33, 20,000/-
2.	16-09-2010	N. Damodar Gupta	16,60,000/-

4. The main objection of the appellant is that he is D10, the Court below, without following Order 39 Rule 3 CPC, granted *ex-parte* status-quo order and as per the settled law as per procedure under Order 39 CPC, the Court has to record dispensing with the notice but the same is not followed.

He further submitted that order of status-quo is equivalent to injunction and to support his argument, he placed reliance on the judgment of this Court in **Sayed Shameer Makandar and others v.**

Syed Ahmed and others^[1] and he further submitted that compliance of Rule 3 is mandatory and to support the same, he relied on a Judgment of Hon'ble Supreme Court in **Shiv Kumar Chadha v. Municipal Corporation of Delhi**^[2] and Judgment of Division Bench of this Court in **Valluru Hemalatha v. Settupalli Panduranga Rao and others**^[3].

5. On the other hand, Advocate for respondents submitted that D10 is a Manager in plaintiffs' firm and as per the case of plaintiffs, he has no capacity to purchase the properties and the properties stand in his name are purchased with the funds of firm and this aspect has to be decided only on the basis of evidence and if the property is alienated, it would lead to other complications and status-quo order granted by the Court below is quite reasonable and justified. In support of his argument, he relied on a Judgment of Division Bench of this Court in **Innovative Pharma Surgicals v.**

Pigeon Medical Devices Pvt. Ltd., and others^[4]. In reply to the arguments of advocate for respondents, advocate for appellant submitted that if any alienation is made during the pendency of the suit, doctrine of *lis pendens* will come into operation and no prejudice will be caused to the plaintiffs even if the plaintiffs succeeds in the suit.

6. I have perused the material papers and also the judgments of this Court in **Valluru Hemalatha v. Settipalli Panduranga Rao and others³** and decision of Hon'ble Supreme Court in **Shiv Kumar Chadha v. Municipal Corporation of Delhi²**. It is mandatory to follow Rule 3 and record reasons while granting any *ex-parte* relief dispensing with the notice. Evidently, no reasons are recorded by the Presiding Officer, while passing the above referred impugned order. The decision relied on by the Advocate for respondents has no application because in that case, the appeal was filed on the apprehension that the trial Court may not dispose of the Interlocutory Application within the time mandated under Order 39 Rule 3A and here the appeal is not filed on that ground, and the appeal is filed only on the ground that mandatory requirements under Rule 3 are not followed.

7. From the submissions of both sides, it is clear that the appellants herein have already filed the counter and the interim injunction application is still pending before the trial Court. Now if any observation is made with regard to merits of the case, it may prejudice the mind of the trial Court in deciding the Interlocutory Application on merits.

8. Considering the material on record, I am of the view that the Presiding Officer has not followed procedure under Order 39 Rule 3

CPC and has not recorded reasons for granting *ex-parte* order and therefore, that order cannot be sustained. Therefore, interim order granted by the trial Court on 04-12-2015 is hereby vacated. The trial Court is directed to dispose of I.A.No.122/2015 in O.S.No.34/2015 on merits within 30 days from the date of receipt of the order, without being influenced by any of the observations made in this order.

9. With above observation, appeal is disposed of accordingly.

No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:04.04.2016

Note:- Furnish CC within one week.

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[1] 1999 (6) ALD 343

[2] (1993) 3 SCC 161

[3] 2001 (2) ALT 414 (D.B)

[4] AIR 2004 ANDHRA PRADESH 310