

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice G.Shyam Prasad

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Civil Miscellaneous Appeal No.333 of 2016

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Date: 16.08.2016

Between:

Lingari Venkata Surendra Reddy and another
..Appellants

and

Gangadasari Sujatha @ Shobha
..Respondent

Counsel for the Appellants: **Mr.Praveen Chikara**
 for Karri Maralikrishna

Counsel for the respondent: **Mr.J.Janakirami**
Reddy

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Miscellaneous Appeal is filed against Order, dated 05-01-2016, in IA.No.1358 of 2014 in OS.No.58 of 2014 on the file of the III Additional District Judge, Kurnool at Nandyal.

We have heard Mr.Praveen Chikara, learned Counsel representing Mr.Karri Muralikrishna, learned Counsel for the appellants, and Mr.J.Janakirami Reddy, learned Counsel for the respondent.

The appellants filed the afore-mentioned suit for declaration of their title in respect of the suit schedule properties and for consequential permanent injunction restraining the respondent from interfering with their peaceful possession and enjoyment thereof and also from dispossessing them therefrom. The respondent filed a counter-affidavit seriously opposing the said reliefs. Along with the suit, the appellants have filed IA.No.1358 of 2014 for temporary injunction. By its Order, dated 05-01-2016, the lower Court has dismissed the IA. Feeling aggrieved thereby, the appellants have filed this Civil Miscellaneous Appeal.

A perusal of the order of the lower Court shows that the lower Court, on *prima facie* appreciation of the documentary evidence, observed that though the appellants have filed Exs.P.1 to P.13, none of those documents *prima*

facie show their possession. The lower Court has further held that all the documents such as pattadar pass book, No.3 adangals and 1-B Register (ROR) extracts among Exs.P.1 to P.13 clearly show the possession of the deceased, who allegedly executed will in favour of the appellants. The lower Court has dismissed the application by holding that the appellants *prima facie* failed to show their possession over the suit schedule property.

The fact that the respondent is the widow of the deceased is not in dispute. The appellants claimed title to the suit schedule property based on Ex.P.1- unregistered will, dated 08.08.2013. As rightly observed by the lower Court, except asserting that they are in physical possession of the property, the appellants have not filed any document in support thereof. In the absence of such evidence, the lower Court is justified in rejecting the application for injunction. Hence, we do not find any illegality or jurisdictional error in the order of the lower Court.

Since the suit for declaration of title is pending, we are of the opinion that transfer of the

suit schedule properties in favour of third parties by the respondent would create third party interests and that may prejudice the interests of the appellants in the event of their success in the suit.

Mr.J.Janakirami Reddy, learned Counsel for the respondent, fairly submitted that a suit filed by third parties for declaration of title against the deceased is already pending and that the respondent is not proposing to sell the suit schedule properties.

Having regard to the facts noted above, we feel that interests of justice would be met, if the respondent does not sell the suit schedule properties pending OS.No.58 of 2014. Accordingly, while declining to interfere with the order of the lower Court, the respondent is restrained from alienating the suit schedule properties pending the suit.

Subject to the above direction, the Civil Miscellaneous Appeal is disposed of.

As a sequel to disposal of the Civil Miscellaneous Appeal, CMAMP.No.671 of 2016,

filed by the appellants for interim relief, is disposed
of as infructuous.

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(C.V.Nagarjuna Reddy, J)

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(G.Shyam Prasad, J)

Dt: 16th August, 2016
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