

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition Nos.2414 and 2417 of 2016

COMMON ORDER:

CRP No.2414 of 2016 is filed by the plaintiff aggrieved by the order dt.19.04.2016 in I.A No.271 of 2015 in O.S.No.440 of 2015 on the file of Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, Khammam whereby his interim injunction petition was dismissed. The same plaintiff is the 2nd defendant in O.S.No.473 of 2015. Himself and his brother, who is the 1st defendant together also filed CRP No.2417 of 2016 against the order dt.13.04.2016 in I.A No.287 of 2015 in O.S.No.473 of 2015 whereby the trial Court granted interim injunction in favour of the plaintiff therein.

2) Since the facts relating to two impugned orders have commonality, the two CRPs are disposed of by this common order. The parties in this common order are referred as they were arrayed in O.S.No.440 of 2015.

3) The factual matrix in both the cases is briefly thus:

a) O.S.No.440 of 2015 is filed by the plaintiff—Badavath Raju for a perpetual injunction initially against the 1st defendant—Varanasi Kalavathi. His case is that he belongs to Scheduled Tribe (Lambada) and 1st defendant is a non-tribe; he purchased the suit schedule site in an extent of 1256 sq.yards in Sy.Nos.138/3 and 4 situated at Chunchupally village and Gram Panchayat under a sale deed dt.10.11.2008 from

Yathavakilla Rama Devi and has been in possession and enjoyment; one Bukya Amarsingh filed LTR case No.12 of 2009 against the vendor of plaintiff and the same was dismissed and the said Bukya Amarsingh filed CMA No.14 of 2009 before Additional Agent to Government, Project Officer, ITDA, Bhadrachalam and during enquiry, the Project Officer called for a report from the Tahsildar wherein the plaintiff's possession and enjoyment was recorded being the Purchaser from Rama Devi; on 10.10.2015, the 1st defendant who is resident of Palvancha, approached the plaintiff and requested him to sell the suit land which he refused and therefore, she bore grudge and started making attempts to trespass into the suit land with her henchmen and therefore, the suit for perpetual injunction.

b) Along with the suit, he filed I.A No.271 of 2015 for interim injunction. The 1st defendant filed counter denying the petition averments. Her case is that the plaintiff is not the owner of the suit schedule property and the sale deed dt.10.11.2008 said to have been obtained by him from one Smt. Yathavakilla Rama Devi is a forged and fabricated document; the boundaries mentioned therein are not correct and they are deliberately mentioned to grab the suit land; the plaintiff originally purchased land to an extent of 1596.66 sq.yds on 05.07.2007 from original owner Smt. Y.Rama Devi and later he sold different parcels of land to 4 persons as follows:

- i) 246.66 sq.yds to Lavudia Mali Nayak S/o. Mangya on 30.07.2008.
- ii) 283 sq.yds to Smt.Lavudia Kamala W/o.Chandana on 30.07.2008.

iii) 440 sq.yds to Smt. Bhukya Ratna W/o. Lachiram on 06.07.2007.

iv) 440 sq.yds to Bhukya Baavu Singh S/o. Saamya on 04.11.2007;

thus after aforesaid sales, the plaintiff was left with only 187 sq.yds and hence his claim that he is the owner of the suit land in an extent of 1256 sq.yds is false and untenable; the 1st defendant purchased 584 sq.yds of land in Sy.Nos.138/3 and 138/4 (suit schedule land in O.S.No.473 of 2015) under sale deed dt.25.08.2005 from Y.Rama Devi and later she sold the said land to one Koram Lakshmi (plaintiff in O.S.No.473 of 2015 and D.2 in O.S.No.440 of 2015) under a sale deed dt.06.07.2013 and since then, said Lakshmi has been enjoying that property; when the plaintiff tried to interfere with the possession and enjoyment of Lakshmi, she filed O.S.No.473 of 2015 against the present plaintiff and his brother Badavath Ramu (D.1 in O.S.No.473 of 2015) and obtained interim injunction against them in I.A.No.271 of 2015.

c) At the instance of D.1, Koram Lakshmi was impleaded as D.2 in O.S.No.440 of 2015.

4) Sofaras O.S.No.473 of 2015 is concerned, the said suit is filed by Koram Lakshmi against one Badavath Ramu and his brother Badavath Raju (plaintiff in O.S.No.440 of 2015) seeking perpetual injunction in respect of suit schedule house site in an extent of 584 sq.yds in Sy.Nos.138/3 and 138/4 situated in Housing Board Colony Area of Chunchupalli gram Panchayat. Her case is that the suit land originally belonged to Smt.Yathavakilla Rama Devi, from whom one Smt.Varanasi Kalavathi purchased under a sada sale deed dt.25.08.2005 and later said

Varanasi Kalavathi sold suit land to plaintiff under a sale deed dt.06.07.2013 and ever since, she has been in possession and enjoyment of the same. While-so, the defendants 1 and 2 tried to trespass into the suit land without any manner of right or title and with much difficulty, she could thwart their attempts. Hence the suit for perpetual injunction.

a) Along with the suit she also filed I.A.No.287 of 2015 seeking interim injunction. It appears, the 2nd defendant—B.Raju alone appeared and filed counter in the said interim injunction petition. He denied the plaint averments and the sale deeds of the plaintiff as well as her vendor. His other counter allegations are akin to his plaint averments in O.S.No.440 of 2015. So the essence of his counter is that he purchased 1256 sq.yds of land in Sy.Nos.138/3 and 138/4 under a sale deed from one Smt. Y. Rama Devi for Rs.5,00,000/- and suit land is a part of the land purchased by him. He denied the title of the plaintiff.

b) The trial Court conducted enquiry in both I.A.No.271 of 2015 in O.S.No.440 of 2015 and in I.A.No.287 of 2015 in O.S.No.473 of 2015. It did not believe the version of Badavath Raju (plaintiff in O.S.No.440 of 2015) for two reasons:

i) Firstly, according to the plaintiff—Raju, he purchased 1256 sq.yds from one Smt. Y.Rama Devi. However, the report called for by the Project Officer, ITDA in CMA No.14/2009 from the Tahsildar, Kothagudem Mandal would show that the plaintiff in fact purchased an extent of 1596 sq.yds from one Y.Rama Devi on 05.07.2007 but his report is not showing that the plaintiff purchased 1256 sq.yds from Y.Rama Devi and therefore, plaintiff's claim of

purchasing the said extent and the suit land in O.S.No.473 of 2015 is part of the said land is not correct.

ii) Secondly, the trial Court observed that the boundaries mentioned by the plaintiff in O.S.No.440 of 2015 in respect of the property in an extent of 1256 sq.yds and the boundaries of the suit land in O.S.No.473 of 2015 in an extent of 584 sq.yds in Sy.Nos.138/3 and 138/4 are different and in view of the said difference, it cannot be said that the suit land in O.S.No.473 of 2015 is part of the suit land in O.S.No.440 of 2015.

c) The trial Court thus disbelieved the plaintiff—Raju’s version and on other hand believed the version of defendants and accordingly vacated the interim injunction earlier granted in I.A.No.271 of 2015 in O.S.No.440 of 2015 and at the same time granted interim injunction in I.A.No.287 of 2015 in O.S.No.473 of 2015 in favour of 2nd defendant—Koram Lakshmi.

Hence the above two CRPs.

5 a) **CRP No.2414 of 2016**: Heard arguments of Sri P.V.Ramana, learned counsel for petitioner and Sri Praveen Kumar Veerjala, learned counsel for respondent Nos. 1 and 2.

b) **CRP No.2417 of 2016**: Heard arguments of Sri P.V.Ramana, learned counsel for petitioners and Sri Praveen Kumar Veerjala, learned counsel for respondent.

6) The point for determination is:

“Whether there are merits in these two CRPs to allow?”

7) **POINT**: As can be seen from the respective contentions, the crux of the case of the revision petitioner/plaintiff is that he purchased 1256 sq.yds of vacant site in Sy.Nos.138/3 and 138/4 from its owner Yathavakilla Rama Devi under sada sale deed dt.10.11.2008 which is the suit land in O.S.No.440 of 2015 and whereas, the suit land of 584 sq.yds in Sy.Nos.138/3 and 138/4 in O.S.No.473 of 2015 is a part of the suit land in O.S.No.440 of 2015 and the defendants—V.Kalavathi and K. Lakshmi have nothing to do with the said land and they came up with forged sale deeds. He thus seeks for injunction in respect of entire 1256 sq.yds of the suit land including the suit land in O.S.No.473 of 2015. On the other hand, the case of defendants is that the plaintiff's version of his purchasing suit land in O.S.No.440 of 2015 i.e, 1256 sq.yds in Sy.Nos.138/3 and 138/4 under a sale deed dt.10.11.2008 from one Y.Rama Devi is utter false and she never executed the said sale deed and her signatures were forged and on the other hand, originally he purchased 1596.66 sq.yds of the site from Y.Rama Devi on 05.07.2007 and out of the same, he sold 1409 sq.yds to third parties under four different sale deeds and thereafter, he was left with only 187 sq.yds of the site and therefore, his claim for 1256 sq.yds of suit land in O.S.No.440 of 2015 and its comprising the suit land of 584 sq.yds in O.S.No.473 of 2015 are all false.

8) In the light of above rival contentions, one of the important issues that would arise for determination in both the suits is whether the suit land of 584 sq.yds in O.S.No.473 of 2015 is part of the suit land of 1256 sq.yds

in O.S.No.440 of 2015 and whether the plaintiff—B.Raju has legal title and possession over said entire extent as on the date of his filing the suit. Apart from this issue, since 2nd defendant—K.Lakshmi filed an independent suit, another issue would be whether the 2nd defendant—K.Lakshmi has legal title and possession in respect of 584 sq.yds of land by the date of her filing the suit. So, for a comprehensive appreciation and to avoid conflicting judgments, in my considered view, both the suits are required to be clubbed and tried together. For the aforesaid purpose, any of the parties can move an appropriate application before the trial Court.

9) Sofaras the interim injunction petitions in both the suits are concerned, the trial Court on bare comparison of the boundaries held as if the properties in both the suits are different and accordingly disbelieved the contention of the plaintiff in O.S.No.440 of 2015. I am afraid, this comparison alone will not decide whether both the properties are one and the same or not, for the reason that in O.S.No.440 of 2015, a larger extent of the property is shown as the suit property and it is claimed that the smaller extent of the property in O.S.No.473 of 2015 is a part of the large extent. Whether this claim is true or false, there is a possibility of both properties showing different boundaries. So in my considered view, a naked eye comparison of the boundaries will not clinch the issue. On the other hand, whether the suit property in O.S.No.473 of 2015 is part of the property in O.S.No.440 of 2015 or not can be decided only after a full-fledged trial. So at this juncture, it is apposite to preserve the properties

covered by both the suits by granting *status quo* order and driving the parties for early trial.

10) In the result, both the CRPs are ordered as follows:

- (i) **CRP No.2414 of 2016 is allowed** and the order dt.19.04.2016 in I.A.No.271 of 2015 in O.S.No.440 of 2015 is set aside and both parties are directed to maintain *status quo* as on the date of filing of the suit, in respect of the suit property.
- (ii) **CRP No.2417 of 2016 is allowed** and the order dt.13.04.2016 in I.A.No.287 of 2015 in O.S.No.441 of 2015 is set aside and both parties are directed to maintain *status quo* as on the date of filing of the suit, in respect of the suit property.
- (iii) Having regard to the facts and circumstances, either party in the above suits is at liberty to move an appropriate application within One (1) month from the date of this order for clubbing up of both the suits and conducting a common trial, in which case, the trial Court shall pass an appropriate order within One(1) month thereon and if the said petition is allowed, the trial Court shall complete the trial and pronounce the judgment in both the suits expeditiously within a period of Six (6) months from the date of deciding the clubbing up petition.
- (iv) No order as to costs in both CRPs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.09.2016

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