

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

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.461 of 2016

02.09.2016

Between:

K.S.Sathyanarayana Rao and others

..Appellants

And

Bussa Sreenivasa Reddy and others

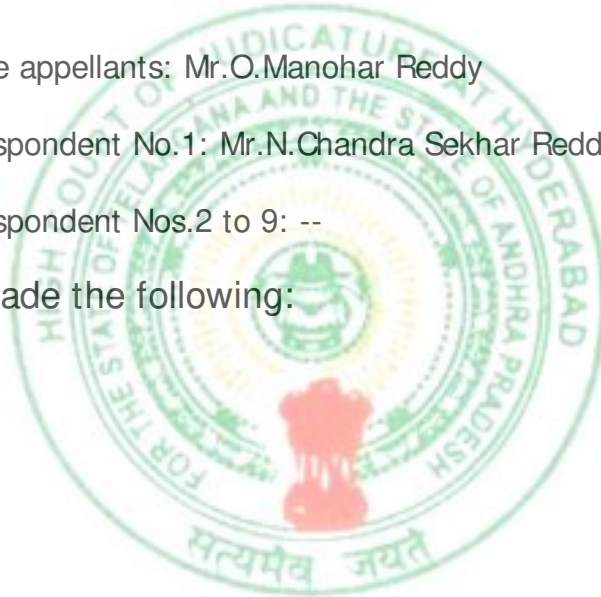
..Respondents

Counsel for the appellants: Mr.O.Manohar Reddy

Counsel for respondent No.1: Mr.N.Chandra Sekhar Reddy

Counsel for respondent Nos.2 to 9: --

The Court made the following:



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

The order, dated 29.03.2016, in I.A.No.249 of 2015 in O.S.No.36 of 2015 on the file of the learned Additional District Judge, Hindupur, is under challenge in this appeal.

2. At the interlocutory stage, the appeal itself is taken up for hearing and disposal with the consent of the learned counsel for the parties.

3. We have heard Mr.O.Manohar Reddy, learned counsel for the appellants and Mr.N.Chandra Sekhar Reddy, learned counsel for respondent No.1.

4. Respondent No.1 filed the aforementioned suit for declaration of title and also for a direction to the defendants, who are the appellants and respondent Nos.2 to 9 herein respectively, to deliver possession of the suit schedule properties. He pleaded in the plaint that the suit schedule properties along with other properties belonged to Ramannagari Bussa Govindappa and his wife Chinna Hanumakkagari Papakka; that both of them were in joint possession and enjoyment of the properties; that they had a son viz., Bussa Ramaiah and he died, leaving behind his wife Aswarthamma and son Sreenivasa Reddy, who is the plaintiff – respondent No.1 herein and that the said Aswarthamma is also no more and that respondent No.1 succeeded to the estate of late Bussa Ramaiah. In paragraph 6 of the plaint, respondent No.1 categorically stated that Katta Narasaiah filed a suit against his father and obtained a decree and in the said proceedings, the suit schedule properties were brought to sale and they were purchased by the third parties. Respondent No.1, however, pleaded that to the best of his knowledge, the sale was already confirmed and possession was delivered to the purchasers. He also raised

a further plea that the defendants or their ancestors are not the purchasers of the suit schedule properties in the Court auction and that they have no right over the said properties.

5. On behalf of the defendants, appellant No.2 filed a written statement in the suit, wherein it was, *inter alia*, pleaded as under:

“The defendants No.1 to 19 are not at all strangers to the suit schedule property and the defendants No.1 to 19 and their predecessors in title are the rightful owners and are in lawful possession and enjoyment of the suit schedule property having purchase the same from the persons then having marketable title over the suit schedule property. On considering the documentary evidence and physical possession of the defendants No.1 to 19 and their predecessors over the suit schedule properties then revenue authorities mutated the names of the predecessors of the defendants in respect of the suit schedule property in revenue records and also issued relevant revenue records such as Pattadar Pass Books and Title Deed Books in the name of late K.Suryanarayana Rao then elder member of the family. It is late K.Narayana Rao who was the auction purchaser of the suit schedule property in E.P.805/1934 in O.S.366/1931 on the file of District Munsif Court, Penukonda and who took delivery of the property through Court as per the orders in E.A.528/1935 in O.S.366/1931 and in E.P.805/1934. The Original of the delivery receipt issued by the District Munsif Court, Penukonda is filed herewith and these defendants crave permission of this Hon'ble Court to read the contents of the same as part and parcel of this plaint pleadings and subsequently K.Narayana Rao purchased the same properties under Reg.Sale deed dt.10-8-1938 and continuous to be in possession and enjoyment of the same. The title and possession of late K.Narayana Rao was confirmed by the decree and judgment made in O.S.86/1953, O.S.37/1954 and O.S.122/1954 and O.S.3/1954 and O.S.No.2/1954. The decree and judgments in the above said suits and the decree and judgments in A.S.241/56 and A.S.242/1956 and A.S.243/1956 and A.S.244/1956 and A.S.245/1956 and the decree and judgments in Second Appeal on the file of Hon'ble High Court of A.P. in

S.A.326/1962 and S.A.327/1962 and S.A.330/1962 and S.A.331/1962 and S.A.332/1962 which decree and judgments confirms the un-interrupted possession and enjoyment of late K.Narayana Rao over the suit schedule properties and after him on his legal heirs. These defendants crave permission of this Hon'ble Court to read the contents of the above referred decree and judgments as part and parcel of these written statements."

6. From the aforementioned pleadings of the parties, there does not appear to be any dispute that the schedule properties held by the original owner – grandfather of respondent No.1 were sold in a Court auction and the same were purchased by K.Narayana Rao, whom the appellants claimed to be their ancestor. Respondent No.1 had not pleaded that he is in physical possession of the schedule properties and enjoying the same. Thus, the facts, *prima facie*, show that the grandfather of respondent No.1 lost his possession as far back as the year 1935 consequent on sale of properties in the Court auction. A perusal of the order of the Court below shows that it had not dealt with the elements of *prima facie* case, balance of convenience and irreparable injury, except reproducing certain judgments. Curiously, the penultimate paragraph of the order refers to para 9 of the affidavit of respondent No.1 filed in support of the aforementioned I.A. and observed that as per the said para, he is satisfied with the fact of existence of *prima facie* case. Para 9 of the affidavit reads as under:

"I swear that I have good and prima-facie case. The balance of convenience is also in my favour as I have been title and right over the schedule mentioned properties."

7. *Ex facie*, the order of the Court below suffers from complete non-application of mind. The Court below failed to apply its mind to the relevant facts of the case and evidently, it had not considered the

elements of *prima facie* case, balance of convenience and irreparable injury. Mere reproduction of certain precedents, without applying the same to the facts of the case on hand, as done by the Court below, does not serve any purpose. A precedent cannot be relied upon in vacuum, but it must apply to the facts of each case. The Court below failed to discuss as to how on the facts pleaded by both the parties, it had come to the conclusion that respondent No.1 established his case. On the contrary, on respondent No.1's own showing the schedule properties were sold in the Court auction as far back as the year 1935. Regarding the doubt expressed by respondent No.1 in the plaint as to whether the Court auction was confirmed or not, the appellants gave the relevant details in their written statement regarding the confirmation of the auction and the subsequent sale in favour of their ancestor – K.Narayana Rao. Hence, on proper appreciation of the element of *prima facie* case, respondent No.1 did not satisfy this element for grant of injunction restraining the defendants from alienating the schedule properties. Equally, respondent No.1, who did not plead that he is in possession of the schedule properties or that during the last 80 years, he had made any effort to claim the said properties, did not satisfy the element of balance of convenience also. In the absence of *prima facie* case and balance of convenience, irreparable injury does not arise. The whole approach of the Court below is not only erroneous, but also unsound.

8. For the aforementioned reasons, the order of the Court below is not sustainable and the same is accordingly set aside. The Civil Miscellaneous Appeal is, accordingly, allowed.

9. As a sequel to allowing the C.M.A., C.M.A.M.P.No.896 of 2016 filed by the appellants for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

02nd September, 2016
GHN

