

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

and

The Hon'ble Sri Justice G.Shyam Prasad

Civil Miscellaneous Appeal No.26 of 2016

Date: 14.09.2016

Between:

Annapureddy Venu Kumari and 2 others

... Petitioners

and

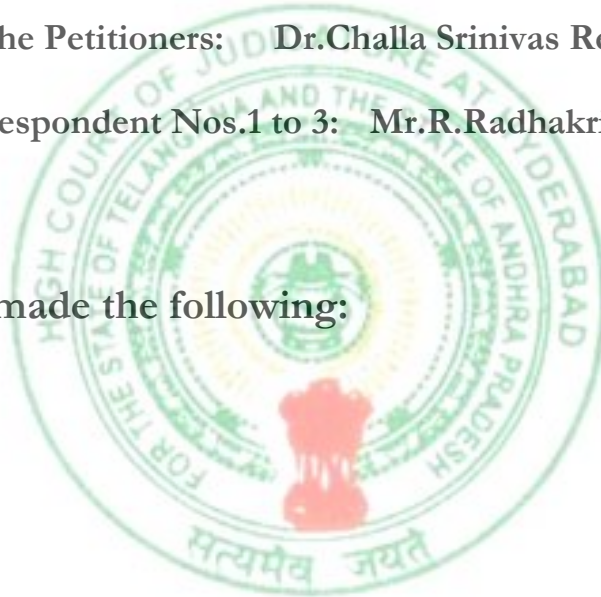
Kalakota Basivi Reddy and 2 others

... Respondents

Counsel for the Petitioners: Dr.Challa Srinivas Reddy

Counsel for respondent Nos.1 to 3: Mr.R.Radhakrishna Reddy

The Court made the following:



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

At the interlocutory stage, the Civil Miscellaneous Appeal is taken up for hearing and disposal with the consent of the learned Counsel for both parties.

The respondents have filed OS.No.649 of 2014 on the file of the IV Additional District Judge, Guntur, for declaration that Exs.P.1 and P.2- gift deeds, Exs.P.3, P.5 to P.8 and P.12 to P.14- sale deeds and Ex.P.4- will executed by either K.V.Reddy or his wife K.Seetharavamma, who are none other than their parents, are illegal and unenforceable. In the said suit, they have filed IA.No.1823 of 2014 for Temporary Injunction in respect of the suit schedule properties. By Order, dated 06-10-2015, the lower Court granted *ad interim* injunction only in respect of item No.1 of the plaint 'A' schedule property and item No.2 of the plaint 'C' schedule property, while rejecting the application in respect of other items. Feeling aggrieved by this order, the defendants in the suit filed this Civil Miscellaneous Appeal.

We have heard Dr.Challa Srinivas Reddy, learned Counsel for the appellants, and Mr.R.Radha Krishna Reddy, learned Counsel for respondent Nos.1 to 3.

It is not in dispute that the appellants/defendants are relying upon the afore-mentioned gift deeds, sale deeds and will executed by the parents of the respondents, who are also the grandparents of appellant No.1. From the discussion undertaken by the lower Court, it is evident that in respect of all items except Item No.1 of the plaint 'A' schedule property and item No.2 of the plaint 'C' schedule property, the appellants have filed possession certificates issued by the Tahsildar, Karlapalem. Even in respect of the afore-mentioned two items, though the appellants have not filed the possession certificates, they have filed cist receipts. As far as the respondents are concerned, they have not filed any iota of evidence showing their possession. Having filed the suit, the burden lies on the respondents to *prima facie* show their physical possession in order to be entitled to an order of injunction. Surprisingly, the lower Court, instead of examining the case of the respondents with reference to the evidence produced by them, examined the documents produced by the appellants. In our opinion, the lower Court has wrongly placed the burden on the appellants, who are the defendants in the suit, to prove their possession rather than subjecting the respondents to such proof.

Admittedly, all the documents including the will, upon which the appellants are placing reliance and asserting their title and possession, are registered documents. Unless the respondents are able to succeed in proving that those documents are unenforceable in law, the appellants have *prima facie* title in their favour. As regards possession, as noted herein before, while the respondents failed to produce any shred of evidence to show their possession, except relying upon the fact that the properties were originally owned by their parents, the appellants have filed either possession certificates or cist receipts. Though the burden was on the respondents/plaintiffs to show their *prima facie* possession, the appellants have, in fact, proved their possession. The lower Court has placed reverse burden on the appellants and granted injunction in favour of the respondents in respect of the aforementioned two items without there being any speck of evidence showing their possession.

In the light of the above discussion, we are of the opinion that the order of the lower Court is not sustainable in law. Accordingly, the order under appeal is set aside, IA.No.1823 of 2014 is dismissed and the Civil Miscellaneous Appeal is

allowed. As the suit is of the year 2014, the lower Court shall make an endeavour to dispose of the same expeditiously.

As a sequel, CMAMP.No.60 of 2015, filed by the appellants for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 14th September, 2016
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(G.Shyam Prasad, J)