

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3094 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 21.03.2016 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, whereby interim order in I.A. No.760 of 2015 in O.S. No.249 of 2015 was set aside granting temporary injunction during pendency of the suit restraining the defendant in O.S No.249 of 2015 on the file of the Court of III Senior Civil Judge, City Civil Court, Secunderabad, from interfering with the peaceful possession and enjoyment of the petitioner before the trial court in a petition filed under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 (for short, 'CPC').

02. For convenience of reference, the ranks given to the parties in I.A. No.760 of 2015 in O.S. No.249 of 2015 will be adopted throughout this Order.

03. The petitioner filed an interlocutory application under Rules 1 and 2 of Order XXXIX of CPC for grant of interim injunction restraining the respondent and his men from interfering with the peaceful possession and enjoyment of the schedule property by the petitioner alleging that the he is absolute owner and possessor of Plot No.36 of Sy.No.166 (Old 157/1) bearing Municipal No.12.13.536 situated at Street No.1, Tarnaka, Secunderabad, admeasuring 370 square yards purchased the same by registered sale deed vide document No.2332 of 1990 dated 13.08.1990 executed in his favour by

Mohd. Hameed representing Jameel Ahmed Hussain as a general power attorney holder, subsequently the petitioner demolished the old structure with a proposal by her husband to construct new house and later such proposal was dropped and the suit schedule property was left vacant. But the petitioner employed a watchman, who is residing therein. While so, on 25.08.2015 some unknown persons visited the schedule property claiming ownership over the same, threatened them with dire consequences. The petitioner lodged a complaint before the police on 27.08.2015. Subsequently, the respondent before the trial court filed caveat petition alleging that he is the owner of the suit schedule property. Therefore, the petitioner before the trial court filed the suit for permanent injunction and filed the present petition in I.A. No.760 of 2015 under Rules 1 and 2 of Order XXXIX of CPC for grant of temporary injunction, during pendency of the suit, restraining the respondent.

04. The respondent filed counter denying the material allegations while contending that Jameel Ahmed Hussain was the real owner of the property and he never authorized Mohd. Hameed, to execute registered sale deed and that the said Jameel Ahmed Hussain sold the schedule property in favour of the respondent. Therefore, the sale in favour of the petitioner by Mohd.Hameed being general power attorney holder representing Jameel Ahmed Hussain is not valid and binding. It is further contended that the respondent having purchased the same is in occupation and enjoyment of the schedule property. The respondent also raised several contentions before the trial court

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about the validity of the general power of attorney and registered sale deed and that the petitioner was never in possession and prayed for dismissal of the petition.

05. During enquiry, only Exs.P.1 to P.8 and R.1 were marked. No witnesses were examined.

06. Considering the evidence on record, upon hearing the argument of both the counsel, the trial court dismissed the interlocutory application in I.A. No.760 of 2015 in O.S. No.249 of 2015 declining to grant temporary injunction during pendency of the suit holding that there is any amount of discrepancy in the documents produced by the petitioner.

07. Aggrieved by the Order passed by the trial court in I.A. No.760 of 2015 in O.S. No.249 of 2015, Civil Miscellaneous Appeal No.33 of 2015, before the I Additional Chief Judge, City Civil Court, Hyderabad, is filed under Rule 1 of Order XLIII of CPC. The appellate court, upon hearing both the counsel, set aside the Order passed by the trial court and granted temporary injunction during pendency of the suit.

08. Aggrieved by the said Order, the present revision petition is filed raising several contentions.

09. During hearing, Sri D.Madhava Rao, learned counsel appearing for the revision petitioner/ respondent, would contend that the person, who sold the property to the petitioner before the trial court, was not authorized by Jameel Ahmed Hussain and recitals of Ex.P.1 itself sufficient to conclude that by the date of execution of Ex.P.1 he was not authorized and on this ground, the petition has to be dismissed. It is further contended

that he purchased the property under valid registered sale deed marked as Ex.R.1 and the same was not considered by the appellate court for different reasons and granted temporary injunction erroneously setting aside the order passed by the trial court.

10. Per contra, Sri K.K. Waghray, learned counsel for the respondent/ petitioner, would contend that the sale deed in favour of the respondent i.e. Ex.R.1 is only a contingent contract and in case the respondent failed to comply the terms and conditions contained in Ex.R.1, the sale would stands cancelled and in such case the respondent is not entitled to any protection. However in a petition filed under Rules 1 and 2 of Order XXXIX of CPC, the requirements are only prima facie, balance of convenience and irreparable loss or substantial injury to be caused to the petitioner, in the event of declining temporary injunction, and the appellate court found the three requirements in his favour and granted temporary injunction, supported the appellate court order, which is under challenge in this revision.

11. According to the respondent/ petitioner before the trial court, he purchased the property from Mohd. Hameed represented Mohd. Jameel Ahmed Hussain, as a general power of attorney holder, which is marked as Ex.P.2 before the trial court. The general power of attorney was executed on 16.08.1990 and the sale deed was executed on 12.08.1990, there is a little discrepancy with regard to date of execution of Ex.P.1-sale deed and execution of Ex.P.2-general power of

attorney. Minute details of general power of attorney were mentioned in the second page of the document i.e., registered sale deed, but the date of execution is different from date of registration. By the date of registration of Ex.P.1-sale deed, Ex.P.2-general power of attorney was executed. In the third page of Ex.P.1, it is clearly mentioned that Mohd. Hameed executed sale deed in pursuance of general power of attorney executed by Jameel Ahmed Hameed vide document No.2582 of 1990 marked as Ex.P.2. Therefore, this discrepancy can be explained only during trial, not at this stage.

12. Even as per clause (7) of Ex.P.2, general power of attorney holder is authorized to act before all authorities including Government, Courts, Revenue Mandal, Collectorate, Registration Office, U.L.C. Office and to sign, verify and file complaints, declarations, Sale deed, Agreement of Sale, gift will etc., and all other petitions before any Tribunal, Court, Government or authorities and registration office and to execute all papers and documents before any authority at all times with regard to the above property.

13. Therefore, the contention that the said Mohd. Hameed was not authorized to execute registered sale deed is without any basis and the terms and conditions of Ex.P.2 are sufficient to conclude that the executant, Mohd. Hameed, was authorized to execute registered sale deed. If there is any discrepancy with regard to the dates that is not relevant at this stage to decide, if the petitioner is able to prove that there is prima facie case in his favour and the other two requirements.

14. Apart from Exs.P.1 and P.2, the respondent herein/ petitioner before the trial court produced the other documents Ex.P.3 - Tax receipt issued by the Municipal Corporation for payment of tax for vacant land and Ex.P.6 is the letter issued by Nagarjuna Nagar Welfare Association and Ex.P.8 - Assessment letter of Municipal Corporation dated 08.08.1996. All the documents would clinchingly establish that the petitioner is prima facie in possession of the property.

15. The appellate court after discussing entire material on record concluded that the petitioner is able to establish prima facie case by producing Exs.P.1 to P.7 and the respondent failed to produce any evidence disputing the prima facie case and also to prove other two requirements for grant of temporary injunction, during pendency of the suit.

16. As per settled law, to claim temporary injunction during pendency of the suit, the petitioner has to establish three requirements, they are prima facie case, balance of convenience and sustaining irreparable loss, in the event no injunction is granted. In catena of decisions, the Apex Court, time and again, held that the petitioner who approached the Court for grant of temporary injunction has to establish all the three requirements.

17. In **KASHI MATH SAMSTHAN AND ANOTHER v. SRIMAED SUDHINDRA THIRTHA SWAMY AND ANOTHER**¹ the Apex Court while deciding a petition under Rule 2 of Order XXXIX of CPC discussed about the requirements for grant of temporary injunction during pendency of the suit held that in

¹ AIR 2010 SC 296

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order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted.

18. Therefore, it is the duty of the petitioner to prove that he has prima facie case to go for trial and he will sustain irreparable loss in case no injunction is granted and also balance of convenience is in their favour. If for any reason, the petitioner failed to prove any one of those requirements, the petitioner is not entitled to claim relief of temporary injunction.

19. In **M/S. JULIEN EDUCATIONAL TRUST v. SOURENDRA KUMAR ROY AND OTHERS**² the Division Bench of the Apex Court while interpreting the word 'prima facie case' held that they are satisfied from the materials on record that as prima facie case has been made out by the appellant Trust as to the agreement for sale, which has to go to trial. Whether there was a concluded contract or not between the appellant trust and the respondent Nos.1 to 8 is a matter of evidence and can only be gone into during the trial of the suit. This brings us to all important question as to whether the balance of convenience and inconvenience lay in favour of the grant of an interim order of injunction in favour of the appellant trust and as to whether the appellant trust would suffer irreparable loss and injury if no such interim order was passed. In such circumstances, the court is of the view that an interim order is required to be

² 2010(1) ALT 58

passed to maintain the status quo of the suit property, during pendency of the suit or specific performance filed by the trust, but at the same time appropriate directions should also be given so that the suit is disposed of expeditiously. It is further opined that at this stage, it would not be appropriate on their part to express any opinion on the merits and demerits of the suit. Having found prima facie case in favour of the appellant trust, it is their view that in the light of the principles of balance of convenience and inconvenience, interim relief should be granted to the appellate trust.

20. Similarly in **YASHODA SUPER SPECIALTY HOSPITALS, PARTNERSHIP FIRM REPRESENTED BY ITS PARTNER G. DEVENDAR RAO V. YASHODA MEDICARE AND RESEARCH CENTER (P) LTD., A COMPANY REGISTERED UNDER COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT NEW DELHI, REP. BY ITS DIRECTOR AND ANOTHER³** this Court followed the principle referred above.

21. By applying the settled principles, it is the duty of the Court to find out whether the plaintiff has got prima facie case, balance of convenience in his favour and sustain irreparable loss in case no injunction is granted. The word 'prima facie case' is not defined anywhere in any of the enactment but the Judge made law says that prima facie case means that only there should be a bonafide contention between the parties or a serious question to be tried, there should be a 'fair or arguable or debatable case'. In **UNITED COMMERCIAL BANK v. BANK OF**

³ 2010(6) ALT 466

INDIA⁴ reiterated the principle laid down in the other judgments referred to supra.

22. However in the present facts of the case, the appellate court basing on the evidence available on record concluded that the petitioner proved prima facie case and also concluded that the balance of convenience is in his favour, apart from that if no injunction is granted to protect his property, to avoid invasion on the rights in the property, the respondent/ petitioner would be put to irreparable loss which cannot be compensated by granting damages. The principle laid down by the Apex Court in **JULIEN EDUCATIONAL TRUST**'s case referred to supra is directly applicable to the present facts of the case, for the reason that in **JULIEN EDUCATIONAL TRUST**'s case the agreement of sale was in dispute, wherein the Apex Court concluded that the validity of agreement of sale can be decided after recording evidence by the Court and at this stage it cannot be concluded. In the present facts of the case, the execution of sale deed, execution of power of attorney by Jameel Ahmed Hussain in favour of Mohd. Hussain, who was authorized to execute registered sale deed besides the other acts conferred on him by virtue of Ex.P.2 have to be decided after full pledged trial here, he has a bonafide contention or a case to go to trial. Therefore, the plaintiff was successful before the appellate court to establish that he has got prima facie case to go for trial in the main suit and that the balance is tilting towards the petitioner before the trial court since the sale deed obtained by the

⁴ AIR 1981 SC 1426

respondent under Ex.R.1 is executed at a later point of time, subject to entitlement of terms and conditions contained therein and it is not known whether he complied the conditions contained in Ex.R.1. In the absence of any material on record to establish substantial compliance of terms and conditions of Ex.R.1, the appellate court has no option except to held that the balance of convenience is in favour of the petitioner before the trial court. Apart from that the petitioner before the trial court and the respondent herein would sustain irreparable injury in case no injunction is granted, since he is in prima facie possession.

23. No doubt prima facie possession cannot be confused prima facie case, when the plaintiff is able to establish arguable case or a case to go for trial that is sufficient besides establishing balance of convenience and sustaining irreparable loss or injury in case no injunction is granted. Therefore, the appellate court did commit no error and warranting interference of this Court while exercising power under Article 227 of the Constitution in view of the Judgment of the Apex Court in **STATE (N.C.T. OF DELHI) v. NAVJOT SANDHU @ AFSAN GURU⁵** and **SUHRID SINGH @ SARDOOL SINGH v. RANDHIR SINGH AND OTHERS⁶**, as power of this Court is supervisory in nature. Therefore, I find no error in granting temporary injunction by appellate court and does not call for interference of this Court. Hence, the order under challenge before this Court in the revision petition hereby confirmed.

⁵ 2003(6) SCC 641

⁶ (2010) 12 SCC 12

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24. In the result, the revision petition is dismissed confirming the Order dated 21.03.2016 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, in C.M.A. No.33 of 2015. No costs.

25. Miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12.09.2016
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