

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

C.M.A.NO.541 OF 2017

ORAL JUDGMENT (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, appellant has challenged the order dated 20.04.2017 passed by the court of XV Additional District Judge, Rangarreddy District at Miyapur in I.A.No.166/2016 in O.S.No.166 of 2016.

The appellant herein is the petitioner before the trial court. The parties will be referred to as per their array before the trial court.

Petitioner filed the aforesaid I.A. under Order 39, Rules 1 and 2 of CPC to grant interim injunction restraining the respondents 1, 2 and 6 from alienating or creating any third party rights on the residential complex called Armsburg Koundiay, being constructed on the suit scheduled property by respondent No.6 in pursuance of development agreement cum General Power of Attorney dated 19.02.2013.

The case of the petitioner is that, respondents 3 and 4 and the father of respondents 1 and 2, are real brothers. Respondent No.5 is the son of respondent No.4. Respondents 1 to 5 and the petitioner

constitute Hindu Joint Family. His great grandfather got five sons and one of his sons viz., Ghanshyam Das, purchased agricultural land to an extent of Acs.6-15 gts. in Sy.No.187 of Quthbullapur Mandal, which is situate at Jeedimetal village, under registered sale deed dated 9.7.1965. The said land was purchased out of the funds of the joint family. On the oral partition among five sons of Rameshwar Dayal, Jeetmal Gupta was allotted to an extent of Acs.2-02 gts. and the remaining Acs.4-13 gts. was shared by other four sons. The partition deed was executed on 24.03.2000 and the entire suit schedule property to an extent of Acs.2-02 gts. had fallen to the share of late Jeetmal Gupta. The respondents 1 and 2, by dividing the said property, entered into an agreement with respondent No.6 and the said respondent, constructed shopping complex and alienated all flats by creating third party interest. The petitioner got 1/6th share out of the suit schedule property. Hence filed the aforesaid I.A., seeking interim injunction, pending the disposal of the suit.

Case of respondents 1 and 2 is that, their grandfather Jeetmal Gupta and his brothers purchased the property out of self earnings in the name of one of his brothers and the properties were orally

partitioned and settled between the parties. He bequeathed all the properties purchased by him under the registered sale deed, to all his children. Plaintiff's father is also a beneficiary under the said will, as such the question of claiming the property as ancestral property, does not arise. The petition schedule property was not purchased from out of the joint family funds. Moreover, the petitioner has not approached the court with clean hands and he has not made out *prima facie* case and balance of convenience in his favour.

The case of respondent No.6 is that, he entered into development agreement with the owners of the land and he completed seven storied building with several flats. It happened two years back and he sold away several flats and some of the documents have to be executed in favour of the purchasers and the purchasers are in possession of the flats. There was no suit property available as shown in the schedule for partition. If at all the petitioner is entitled for partition, he may be seek monetary benefit towards his share.

We have heard the learned counsel for the parties.

At the outset we note that since the present appeal is against the order passed in an interlocutory application filed under Order 39,

Rules 1 and 2 of CPC, we are not going on the merit, whether the appellant/petitioner before this court is having 1/6th share in the schedule property as claimed by him. But the fact remains, as admitted by the petitioner, development agreement – cum – General Power of Attorney, was entered into by respondents 1 and 2 with respondent No.6.

It is not in dispute that after taking possession of the land, respondent No.6 constructed seven storied building, containing several flats, by spending huge amount and respondents 1, 2 and 6 also sold away several flats to third parties and they are in possession.

In these circumstances, the court below finding no balance of convenience in favour of the petitioner, dismissed the interlocutory application.

It cannot be disputed that if the appellant/petitioner succeeds in the suit in O.S.No.166 of 2016, the decree court can direct the respondents to handover the remaining flats. If flats are not available, direction can be issued to compensate the appellant/petitioner in terms of money or some alternate land, since the share of the

appellant/petitioner, is being claimed as 1/6th out of Acs.2.02 cents in the aforesaid survey number.

In view of facts recorded above, we find no illegality or perversity in the order passed by the court below.

Finding no merit in the present appeal, the same is accordingly dismissed. No costs.

Miscellaneous petitions pending if any, shall stand closed.



SURESH KUMAR KAIT,J

P.KESHA VA RAO,J

DATE:17—11—2017

AVS