

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.359 of 2016

JUDGMENT: (per Justice Sanjay Kumar)

This civil miscellaneous appeal under Order 43 Rule 1 C.P.C. arises out of the order dated 30.03.2016 passed by the learned Additional Senior Civil Judge, Narasaraopet, in I.A.No.127 of 2016 in O.S.No.38 of 2016. The said I.A. was filed by the respondent herein, the plaintiff in the suit, under Order 39 Rules 1 and 2 C.P.C. seeking a temporary injunction restraining the appellants herein, the defendants in the suit, from interfering with his possession and enjoyment over the suit schedule property. By the order under appeal, the trial Court allowed the I.A. and restrained the appellants/defendants from interfering with the possession and enjoyment of the respondent/plaintiff over the suit schedule property till the disposal of the suit.

Heard Sri Rama Mohan Palanki, learned counsel for the appellants/defendants, and Sri Sreenivasa Rao Aravala, learned counsel for the respondent/plaintiff.

The case of the appellants/defendants was that they were entitled to the suit schedule property in terms of the registered Settlement Deed dated 19.10.1989 executed by one Thati Venkateswarlu in favour of his wife, Seetharavamma, reserving in her a life interest and thereafter bestowing the property upon the children of his brother, the appellants/defendants. The respondent/plaintiff, on the other hand, claimed that Seetharavamma, during her lifetime, executed registered Will Deed dated 18.06.2011 bequeathing the suit schedule property upon him. Seetharavamma admittedly died in December, 2015. The

respondent/plaintiff filed the subject suit in the year 2016 seeking declaration of his title in respect of the suit schedule property and a consequential permanent injunction restraining the appellants/defendants from interfering with his possession over the said property. Therein, he filed I.A.No.127 of 2016 seeking a temporary injunction on the same lines pending disposal of the suit. The claim of the appellants/defendants before the trial Court, however, was that they came into possession of the suit schedule property pursuant to the Settlement Deed after the death of Seetharavamma. In the light of these rival claims, the trial Court took up the I.A. for consideration and rendered the order under appeal.

Perusal of the order under appeal reflects that the trial Court practically decided the main issue arising in the suit as to the title in relation to the suit schedule property. Significantly, though reference was made to the rival claims of the parties as to who was in possession, there is no clear finding rendered by the trial Court on this aspect.

Though it is settled law that the issue of title can be gone into incidentally while adjudicating an application for a temporary injunction, the trial Court misguided itself and practically decided the suit. Further, the trial Court did not look into the more crucial aspect as to which party had established its possession over the suit schedule property, which would be deciding factor in an application for a temporary injunction in connection with the possession, pending disposal of the suit.

The order under appeal is therefore unsustainable on facts and in law and is accordingly set aside. The matter is remitted to the file of the learned Additional Senior Civil Judge, Narasaraopet, for consideration afresh of the subject I.A. on merits and in accordance with law. This

exercise shall be completed expeditiously and, in any event, not later than four weeks from the date of receipt of a copy of this order.

The civil miscellaneous appeal is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date:03.08.2017

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