

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL NOS.294 AND 908 OF 2016

C O M M O N J U D G E M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

These two appeals under Order 43 Rule 1(r) CPC arise out of the order dated 25.02.2016 passed by the learned X Additional Chief Judge, City Civil Court at Hyderabad, in I.A.No.634 of 2015 in O.S.No.443 of 2015. C.M.A.No.294 of 2016 was preferred by the 1st defendant in the suit, while C.M.A.No.908 of 2016 was filed against the very same order by the 2nd defendant.

O.S.No.443 of 2015 was filed by the 1st respondent in the appeals through her General Power of Attorney (GPA) holder, Vakkalagadda Srinivas, seeking partition and separate possession of her half share in the suit schedule property and a consequential declaration that the registered Development Agreement-cum-General Power of Attorney (GPA) bearing Document No.2936/2013 dated 20.07.2013 executed by the 1st defendant in favour of the 2nd defendant was null and void and not binding upon her. She also sought a final decree in relation to her share in the suit schedule property and delivery of separate possession thereof apart from costs.

I.A.No.634 of 2015 was filed in the suit by the 1st respondent/ plaintiff under Order 39 Rules 1 and 2 CPC seeking an ad interim injunction restraining the defendants in the suit from alienating the suit schedule property to third parties pending disposal of the suit. By the order under appeal, the trial Court granted an injunction as prayed for. Aggrieved thereby, the 1st and 2nd defendants in the suit are before this Court by way of these separate appeals.

Heard Sri Vedula Venkataramana, learned senior counsel representing Sri M.A.K.Mukheed, learned counsel, and Sri Ch.Koteswara Rao, learned counsel, appearing for the appellants in the two appeals, and Sri N.Subba Rao, learned counsel representing Sri K.P.Vijay Kumar Goud, learned counsel for the 1st respondent/plaintiff. The other respondents in both the appeals are shown as not necessary parties to these appeals.

Parties shall hereinafter be referred to as arrayed in the suit.

The case of the plaintiff before the trial Court was as under: Smt. Vijaya Murthy, wife of S.Krishna Murthy, the mother of the 1st defendant and paternal grandmother of the plaintiff, purchased the suit schedule property, an extent of 1160 square yards, bearing Municipal Nos.2-2-1109/3A and 2-2-1109/3B, situated at Bagh Amberpet, Hyderabad, under registered sale deed bearing Document No.1348/1961 dated 26.04.1961. The 1st defendant and the father of the plaintiff, late S.Srivardhan, were her sons. While so, S.Srivardhan expired in a road accident in the United States of America in the year 1997. Vijaya Murthy and S.Krishna Murthy died intestate on 13.01.2013. The plaintiff claimed a half share in the suit schedule property along with the 1st defendant and alleged that the 1st defendant did not agree for amicable partition thereof. While so, she came to know in January, 2015, through her close associates in India, that the 1st defendant was making efforts to alienate the suit schedule property and upon verification, it came to light that he had executed the registered Development Agreement-cum-GPA bearing Document No.2936/2013 dated 20.07.2013 in favour of the 2nd defendant, a construction firm. The plaintiff further alleged that the 1st defendant had brought into existence a forged and fabricated Will

and thereby executed the said Development Agreement-cum-GPA. She asserted that her grandmother had died intestate and never executed a Will. She further asserted that the 2nd defendant had commenced construction of apartments in the suit schedule property and hectic efforts were being made to alienate the same to third parties so as to deprive her of her legitimate rights. On the strength of these averments, the plaintiff sought interim protection.

In his written statement, the 1st defendant stated that the person who filed the suit, the plaintiff's GPA holder, was a complete stranger to the family and that he had no occasion to gain knowledge of their family affairs. He asserted that the plaintiff had created the GPA in favour of this person and got filed the present suit only to harass him. He stated that the plaintiff never visited India since her childhood and she had never seen her grandparents or other family members. He denied that the plaintiff and he were joint owners or joint possessors of the suit schedule property and asserted that he was the absolute owner and possessor thereof.

While admitting the relationship between the parties, he stated that at the time of the death of S.Srivardhan, the plaintiff was about 3½ years of age and her mother, Dr.Deepthi, married one Dr.Samir S.Saxena, who adopted the plaintiff as his own daughter. He asserted that all the certificates of the plaintiff reflected the name of Dr.Samir S.Saxena as the father and, therefore, she could no longer claim to be the daughter of S.Srivardhan. He explained the circumstances which led to the death of Vijaya Murthy and Krishna Murthy, his parents, and how he came to India from England at that point of time to take care of them. He pointed out that his father had died at the age of 89 years while his mother was 84 years old when

she expired. He further stated that his mother had executed Will deed dated 23.11.2006, when she was hale and healthy, wherein his father had also signed in the presence of two witnesses. He therefore denied the plaintiff's claim that Vijaya Murthy had died intestate and asserted that the suit schedule property was bequeathed to him absolutely. He further stated that the plaintiff had no knowledge or contact with her grandparents and was also suffering from 'Borderline Personality Disorder', a psychiatric disease. He denied the claim of the plaintiff that she had attempted an amicable settlement and asserted that she had never sent any notice or had any telephone conversation with him asking for partition. He asserted that the pleadings in this regard were set up by the plaintiff's GPA to create litigation and to extract money from him and his wife, both doctors settled in England.

He asserted that when he came to India along with his family to see his parents, his father told him that his mother had executed a Will in his favour. After the death of his parents, he stated that he opened the almirah and saw the Will along with a copy thereof. Basing upon this bequest, he stated that he entered into the registered Development Agreement-cum-GPA in favour of the 2nd defendant on 20.07.2013 and delivered possession of the suit schedule property. He further stated that the 2nd defendant had constructed a multi-storied building in accordance with norms and that the 2nd defendant and he were entitled to half share each therein. He further stated that he had already sold flats to various third parties after receiving consideration and that the purchasers were also put in possession. He pointed out that no objection had been raised at that point of time by anybody. He further pointed out

that the suit schedule property, having been purchased by his mother, was her self-acquired property and that she had absolute rights to bequeath it to him. He pointed out that in the said Will, his mother had spoken of the fact that the plaintiff was living with Dr.Samir S.Saxena, who had married her mother after the death of her natural father. He pointed out that the plaintiff had signed in the GPA executed in favour of Vakkalagadda Srinivas as Shrusti Saxena and her passport also reflected Dr.Samir S.Saxena as her father. He asserted that once she was adopted by her mother's second husband, Dr.Samir S.Saxena, the plaintiff became his daughter for all purposes and was therefore not entitled to claim under her natural father, by virtue of Section 12 of the Hindu Adoptions and Maintenance Act, 1956. He stated that he and the 2nd defendant had executed sale deeds in favour of prospective buyers and only some more sale deeds remained to be executed.

He further pointed out that in the GPA executed by the plaintiff in favour of Vakkalagadda Srinivas, the suit schedule property was shown as an extent of 2000 square yards, while in the plaint it was shown as 1200 square yards but in the plaint schedule it was shown as 1160 square yards and asserted that this clearly established that neither the plaintiff nor her agent had knowledge as to the correct particulars of the suit property. He also relied upon the fact that the plaintiff's mother, Dr.Deepthi, divorced her second husband, Dr.Samir S.Saxena, and the divorce decree passed by the American Court recorded that the plaintiff was the adopted daughter of Dr.Samir S.Saxena. He therefore asserted that in the light of this adoption, the plaintiff ceased to have any legal right to claim the property of her natural father or his family.

These suit pleadings were more or less replicated in those filed in support of and against the subject I.A. An additional counter was also filed on behalf of the 1st defendant stating that his mother had not only signed on the original Will executed by her but also upon the copy thereof and both documents were attested by witnesses. The presence of two Wills was explained in this manner.

The 2nd defendant filed a counter to the injunction I.A. asserting that the plaintiff had failed to establish a *prima facie* case and balance of convenience in her favour and on the other hand, the balance was heavily in favour of the defendants. The 2nd defendant put the agent of the plaintiff to strict proof of his lawful capacity to represent her. The 2nd defendant asserted that it had commenced construction of the flats in the suit schedule property in 2013 and that the entire project was completed towards the end of 2014. It further stated that it had sold all the 10 flats which fell to its share, out of which 7 flats were sold to the parties arrayed as defendants 3 to 11 in the suit under registered sale deeds and sale deeds were yet to be executed for the remaining three flats. As regards the share of the 1st defendant, out of the 10 flats which fell to his share, he was stated to have sold 4 flats by way of registered documents and the said purchasers were put in possession. The 2nd defendant claimed that it had invested about Rs.2.50 crore for construction of the apartment complex and denied the plaintiff's claim that she had any rights in the said property. The 2nd defendant further stated that it was a *bonafide* developer of the suit schedule property under registered Development Agreement-cum-G.P.A. dated 20.07.2013 and that no objection had been raised at any point of time during the course of the construction. It further stated that before embarking

upon the project, a caution notice was also published in Eenadu Telugu Daily newspaper inviting objections but no response had been received and only thereafter, it proceeded with execution of the registered Development Agreement-cum-G.P.A. and commenced construction in accordance with law.

Defendants 3 to 11 adopted the stand of the 2nd defendant.

In the rejoinder to the counter filed by the 1st defendant in the subject I.A., the agent of the plaintiff stated that the plaintiff was never adopted at any point of time and had no knowledge of any such adoption, as claimed by the 1st defendant. The documents filed by the 1st defendant in this regard were disowned by stating that the same would not bind the plaintiff. It was further stated that assuming for a moment, without admitting, that the alleged adoption took place without the knowledge of the plaintiff, the adoption would not be valid as the step-father of the plaintiff married her mother at a church in Las Vegas, Nevada, USA, in 1999 and as he was not a Hindu. It was therefore asserted that the step-father had no capacity to adopt a Hindu in terms of the Hindu Adoptions and Maintenance Act, 1956, and therefore, the documents filed in this regard had no legal impact. It was also asserted that having remarried, the mother of the plaintiff had no right to give the plaintiff in adoption and that such adoption through her was not valid in the eye of law. It was reiterated that the plaintiff's right as the granddaughter of late Vijaya Murthy could not be defeated by the 1st defendant and the alleged Will, under which the 1st defendant claimed, was again denied.

The plaintiff marked eleven documents in the subject I.A., while Ex.R1 was marked on behalf of the defendants. The plaintiff marked the sale deeds executed by the 1st and 2nd defendants apart

from the registered Development Agreement-cum-GPA executed by the 1st defendant in favour of the 2nd defendant. She also filed a notarized copy of the GPA executed by her in favour of Vakkalagadda Srinivas and the market value assistance issued by the Sub-Registrar, Chikkadpally, Hyderabad. The decree of divorce passed by the District Court, Clark County, Nevada, USA, was filed by the defendant.

Faced with the rival claims of the parties, the trial Court opined that there were variations in the copies of the Will relied upon by the 1st defendant and seized the said documents. The trial Court concluded that there was a cloud over the rival claim of the 1st defendant which required to be adjudicated in the final proceedings and there was a triable issue as to the validity of the Will. The trial Court observed that as per the decree of the American Court, the plaintiff was born on 26.09.1993. The trial Court also referred to the petition filed by the mother of the plaintiff before the American Court (Ex.B2). However, the appendix of evidence does not reflect any such document. As per the trial Court, this document recorded that the plaintiff was adopted on 08.02.2001. The trial Court then dealt with the issue as to whether such an adoption would be in keeping with the provisions of the Hindu Adoptions and Maintenance Act, 1956 and concluded that the adoption of the plaintiff by Dr.Samir S.Saxena was in contravention of religious norms and also the Hindu Adoptions and Maintenance Act, 1956. Holding that a *prima facie* case was made out in favour of the plaintiff, the trial Court observed that majority of the flats constructed in the suit schedule property had already been alienated to third parties but the plaintiff had made out her right to seek partition for her share therein and held that if

the defendants were allowed to further alienate the flats already sold, there would be no property left for partition. The trial Court therefore found that the balance of convenience and irreparable loss were in favour of the plaintiff and accordingly granted an injunction restraining the defendants from alienating the suit schedule property.

Sri Vedula Venkataramana, learned senior counsel, would place reliance on Section 12 of the Hindu Adoptions and Maintenance Act, 1956, and contend that once she was adopted, the plaintiff ceased to have any claim over the property of her natural father or his family. Section 12 of the Hindu Adoptions and Maintenance Act, 1956 reads as under:

‘12. Effects of adoption:--

An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption and from such date all the ties of the child in the family and his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (b) any property which is vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
- (c) the adopted child shall not divest any person of any estate which is vested in him or her before the adoption.’

Section 12(b) protects the right of the adopted child to property which had vested in it before adoption. In the present case, such is

not the situation as the right of succession to the property of Vijaya Murthy only opened up when she died in 2013, by which time the alleged adoption of the plaintiff had already taken place. However, Sri N.Subba Rao, learned counsel, would contend that the alleged adoption of the plaintiff by Samir S.Saxena in 2001 has no legal validity. He would point out that Samir S.Saxena was not a Hindu and could not therefore have adopted the plaintiff under the Hindu Adoptions and Maintenance Act, 1956. He would further assert that only if an adoption took place which was valid in the eye of law, the plaintiff can be said to have been divested of her rights in terms of Section 12 of the Hindu Adoptions and Maintenance Act, 1956. He would point out that the mother of the plaintiff, Dr.Deepthi, would herself have been the giver and taker in the adoption and that this is contrary to the settled legal position. He would assert that no grounds are made out to interfere with the order under appeal.

In reply, Sri Vedula Venkataramana, learned senior counsel, would point out that the plaintiff had not even signed any of the pleadings and there was no indication as to what her contact was with the agent, Vakkalagadda Srinivas, who was prosecuting this litigation on her behalf. Learned senior counsel would again reiterate that this agent has no knowledge of the family matters of the plaintiff and the 1st defendant and was prosecuting the litigation only to harass the 1st and 2nd defendants. He would further point out that the plaintiff willfully suppressed in her pleadings the existence of the step-father and her adoption by him and it was only because of the 1st defendant's written statement that this fact came to light. He would point out that even in the suit, the plaintiff had not mentioned her surname and did not choose to produce any document in

evidence of her continuing with her natural father's surname 'Susarla'. He would also point out that this suit was filed belatedly as construction of the flats in the suit schedule property was completed by then and most of the said flats had also been sold to third parties. Learned senior counsel would assert that the plaintiff had failed to make out a *prima facie* case or balance of convenience in her favour or that she would suffer irreparable loss if no injunction was granted in her favour at this late stage. He would assert that the plaintiff's claim after such a long time rendered her ineligible to claim equities or grant of an injunction at this stage. He would point out that on the contrary, the injunction granted put the buyers of the flats, for which registration is yet to take place, at great inconvenience and distress. He would therefore contend that the trial Court ought not to have granted the injunction as prayed for, overlooking all these aspects and pray for setting aside the injunction.

At the outset, it may be noticed that the suit is still at a nascent stage and it would be wholly premature for this Court to go into the merits of the rival claims at this stage. Consideration in these appeals would therefore have to be limited to the bare essentials for rendering a decision with regard to validity of the interim injunction granted by the trial Court.

The following admitted facts may be noted:

Vijaya Murthy, the admitted owner of the suit schedule property in her own right, died in the year 2013. The 1st defendant and the father of the plaintiff, S.Srivardhan, were her sons. S.Srivardhan met with an untimely death in the year 1997. His widow, Dr.Deepthi, entered into a second marriage with Dr.Samir S.Saxena in the year 1999. As per Section 15(1)(a) of the Hindu

Succession Act, 1956, if Vijaya Murthy had died intestate, her property would devolve not only upon the 1st defendant, her son, but also upon the plaintiff, being the child of her predeceased son. However, the intervening crucial circumstance is the adoption of the plaintiff by her step-father, Dr.Samir S.Saxena. The documents placed on record before the trial Court indicate the factum of such an adoption having taken place. Ex.R1 decree of divorce granted by the District Court, Clark County, Nevada, USA, records that the parties thereto, Deepthi Saxena and Samir S.Saxena had one child, Shruti Saxena, the plaintiff. In this regard, the decree states as under:

‘THE COURT FURTHER FINDS that the parties have one child; Srushti Saxena (“Srushti”) born on September 26, 1993. Srushti is Plaintiff’s biological child and Defendant’s adopted child. Srushti has reached the age of eighteen and graduated from High School. The parties have not adopted any other children, and Plaintiff is not pregnant.’

Unfortunately, though some other documents seem to have been placed before the trial Court, the appendix of evidence does not indicate the same. However, as stated *supra*, the trial Court referred to these documents in the body of the order. Trite to state, the trial Court needs to be more mindful of this aspect and must take care to diligently record all the documents adduced in evidence even at the interlocutory stage while rendering an interim order on the basis thereof. It is however not disputed before this Court that these documents were placed before the trial Court and the same are accordingly examined for the purpose of deciding these appeals. The marital settlement agreement executed by and between Deepthi Saxena and Samir S.Saxena reiterated that Shruti, the biological child of Deepthi Saxena and the adopted child of Samir S.Saxena,

had reached the age of 18 years and had graduated from High School. The petition filed by Deepthi Saxena for dissolution of the marriage recorded that she had married Samir S.Saxena on 24.04.1999 in Las Vegas, Nevada, USA, and that no children were born to them; that Samir S.Saxena had adopted her child, Shruti Saxena, on 08.02.2001. The counter petition filed by Samir S.Saxena before the American Court also demonstrates that he admitted that no children were born of their marriage and that he had adopted Deepthi's daughter, Shruti Saxena.

It may be noticed that the plaintiff, having approached the trial Court by way of an application under Order 39 Rules 1 and 2 CPC, had to discharge the burden of not only demonstrating a *prima facie* case in her favour but also that balance of convenience was in her favour and that she would suffer irreparable and irretrievable loss if she was denied an interim injunction pending disposal of the suit. In this regard, the weaknesses, if any, in the case of the defendants would have no role to play. No doubt, the 1st defendant set up a rival claim under the Will dated 23.11.2006 allegedly executed by his mother, Vijaya Murthy. The validity of this Will has to be gone into during the trial. However this Will, as such, had no role to play in determining as to whether the plaintiff independently made out a *prima facie* case for grant of an injunction pending the suit. As mentioned *supra*, had it not been for the fact that the plaintiff was adopted by her step-father, she would have made out a *prima facie* case that she was entitled to succeed along with the 1st defendant to the properties of her grandmother, had she died intestate, under Section 15 of the Hindu Succession Act, 1956.

However, the status of the adoption of the plaintiff is in dispute. In this regard, it may be noted that Section 5 of the Hindu Adoptions and Maintenance Act, 1956, states that no adoption shall be made by or to a Hindu except in accordance with the provisions contained in the Act. It is admitted that Samir S.Saxena is not a Hindu. However, the plaintiff's mother, Deepthi, was a Hindu. That being said, there is no indication of the alleged adoption of the plaintiff by Samir S.Saxena having taken place in India. The marriage of the plaintiff's mother with Samir S.Saxena was in the USA in the year 1999 and the adoption of the plaintiff by Samir S.Saxena was on 08.02.2001. In the absence of evidence to the contrary, which is not forthcoming as of now, this adoption must have also taken place in the USA. Significantly, the Hindu Adoptions and Maintenance Act, 1956, only extends to the whole of India, except the State of Jammu and Kashmir. Therefore, the plaintiff's adoption by Samir S.Saxena in the USA would not even attract the provisions of the Hindu Adoptions and Maintenance Act, 1956. Such adoption, if it took place in the USA, would have obviously been governed by American law as the parties were domiciled in the USA at that time. The approach of the trial Court in testing the adoption of the plaintiff under the Hindu Adoptions and Maintenance Act, 1956, is therefore not correct. In consequence, the case law relied upon by the trial Court and by Sri N.Subba Rao, learned counsel, in relation to validity of adoptions under the aforestated enactment or under general Hindu law also has no relevance.

Further, it is significant to note that the plaintiff, despite the fact that she was 18 years of age by the time the marriage settlement was entered into by her mother and her adoptive father after their

divorce, did not even choose to disclose the factum of her adoption. Skillfully, the plaint avoids mention of her surname. That apart, no document is placed on record in proof of the plaintiff having ever used the surname of her natural father. This suppression gives rise to a strong doubt that the plaintiff, being well aware that her claim might be impaired by disclosure of her adoption by Samir S.Saxena, chose to conceal it. That being said, the niceties of this adoption and the impact thereof on the suit claim would necessarily have to be adjudicated by the trial Court in the suit.

As the very applicability of the Hindu Adoptions and Maintenance Act, 1956, to the adoption of the plaintiff in the year 2001 is in doubt, the question of applying Section 12 thereof is also open to question. However, the general legal position is that an adopted child severs all ties with the natural family. The property in relation to which the plaintiff seeks to assert rights is situated in India. Therefore, the issue of divestiture of her rights in such property owing to her adoption by Samir S.Saxena, presumably in the U.S.A., would also have to be examined by the trial Court. At this stage, the issue of Vijaya Murthy having died intestate is also open to question as the 1st defendant set up a Will, under which he claims exclusive rights. In addition thereto, the status of the plaintiff, owing to her adoption by her step-father, is equally open to question. In effect, no *prima facie* case was made out by the plaintiff at this stage.

As regards the balance of convenience, it may be noticed that Vijaya Murthy died in early 2013. The Development Agreement-cum-GPA in favour of the 2nd defendant was executed thereafter by the 1st defendant in July, 2013. The plaintiff did not choose to take any steps at that stage. It was only in June, 2015, that she filed the

present suit. It is also admitted that sale deeds have already been executed in favour of most of the purchasers of the flats in the apartment complex constructed in the suit schedule property. Nine of such purchasers, in relation to 7 flats, were made parties to the suit. There is no clear indication as to who informed the plaintiff of the construction of the apartments. Except for stating that she came to know of it through her 'close associates' in India, there is no whisper of who these 'close associates' were and how the GPA holder, Vakkalagadda Srinivas, a Special Education Teacher, has such close contact with her. Further, there is no indication of the plaintiff having ever come to India either to meet her grandparents or to develop 'close associations' with anybody here.

The stand of the 1st defendant is that the plaintiff has no personal interest in this litigation and that it is the agent who is prosecuting it to cause harassment to him and the 2nd defendant and to extract money. The aforestated facts lend strong support to this contention of the 1st defendant. That apart, the inescapable fact remains that the plaintiff did not take any steps earlier, be it at the stage when the 2nd defendant caused issuance of a public notice before entering into the Development Agreement in the year 2013 or thereafter, during the course of construction and completion thereof.

Sri Vedula Venkataramana, learned senior counsel, placed reliance on ***B.L.SREEDHAR AND OTHERS V/s. K.M.MUNIREDDY (DEAD) AND OTHERS***¹ to contend that the plaintiff is estopped from questioning the sale transactions, past and proposed, of the flats constructed in the suit schedule property having kept silent all along. Therein, the Supreme Court observed that if a man, either by words

¹ AIR 2003 SC 578

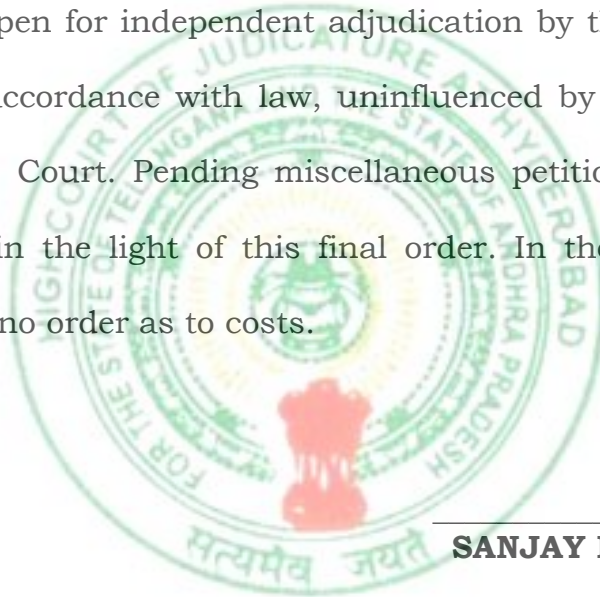
or by conduct, intimates that he consents to an act which had been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question legality of the act he had sanctioned to the prejudice of those who had given faith to his words or to the fair inference to be drawn from his conduct. This Court finds that this edict would squarely apply to the plaintiff.

The delay on the part of the plaintiff in approaching the Court invariably tilts the balance of convenience in favour of the third parties whose innocent involvement arose out of her prolonged silence. The finding of the trial Court that the balance of convenience lies in favour of the plaintiff therefore cannot be countenanced. All the more so, as the trial Court not only restrained alienation of the unsold flats but granted a general injunction against the 1st and 2nd defendants and also the purchasers, who were impleaded as defendants 3 to 11. In any event, as the suit property has already been developed and a major part of it has also been sold away, the plaintiff can be compensated monetarily if she succeeds in the suit and cannot, at this belated stage, be permitted to set at naught all the developments which took place during her somnolence, giving rise to the occasion where unknowing third parties secured independent rival interests.

This Court therefore holds that neither did the balance of convenience weigh in favour of the plaintiff nor did she demonstrate that she would be put to irreparable loss by denial of an interim injunction.

Viewed thus, the trial Court, having been swept away by the fact that there was a triable issue as regards the Will set up by the 1st defendant, erred in holding that the three essential pre-requisites for grant of an injunction were established by the plaintiff. This Court finds to the contrary and in consequence, the interim injunction granted by the trial Court is held to be without tenable basis.

The Civil Miscellaneous Appeals are accordingly allowed setting aside the injunction dated 25.02.2016 passed by the learned X Additional Chief Judge, City Civil Court, Hyderabad, in I.A.No.634 of 2015 in O.S.No.443 of 2015. All issues, referred to *supra*, are however left open for independent adjudication by the trial Court on facts and in accordance with law, uninfluenced by any conclusions drawn by this Court. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. In the circumstances, there shall be no order as to costs.



SANJAY KUMAR, J

ANIS, J

3rd JANUARY, 2017

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